

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>			1. CONTRACT ID CODE	PAGE OF PAGES 1
2. AMENDMENT/MODIFICATION NO. MODIFICATION		3. EFFECTIVE DATE SEE BLOCK 16C.	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (IF APPLICABLE)
6. Issued By		Code	7. ADMINISTERED BY (If other than Item 6)	
			Code	
8. Name and Address of Contractor (No., street, county, State and ZIP Code)			(x)	9A. AMENDMENT OF SOLICITATION NO.
				9B. DATED (SEE ITEM 11)
				10A. MODIFICATION OF CONTRACT/ORDER NO.
				10B. DATED (SEE ITEM 13)
CODE		FACILITY CODE		

**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS**

	The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers		is extended	<input checked="" type="checkbox"/>	is not extended.
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Offer's must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning \_\_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO : (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
X	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF : <b>FAR 52.212-4(c)</b>
	D. OTHER (Specify type of modification and authority)

**E. IMPORTANT:** Contractor ☐ is not, ☒ is required to sign this document and return 0 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

See Attached

Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
		BY _____	
(Signature of person authorized to sign)		(Signature of Contracting Officer)	

## SIGNIFICANT CHANGES

### Please be advised of the following:

1. The purpose of this modification is to update clauses to the latest version of the Logistics Worldwide (LOGWORLD) Services Schedule Solicitation, TFTP-MB-008745-B (Refresh #5). Periodic changes are necessary to update pertinent clauses that keep the solicitation current for all schedule 874V contractors. All clauses, regulations and/or changes found within this document will be incorporated into the referenced contract cited in the SF-30 and these clauses, regulations and/or changes will replace all previous versions of said clauses. The attention of the Contractor is invited to the following changes made since the previous solicitation (Refresh #4 dated July 21, 2006)

2. **Service Contract Act (SCA) Wage Determination Index** dated March 26, 2008 is attached. This index lists the most recent revision numbers as of its effective date. Contractor should review the revised "INDEX OF REGISTER OF WAGE DETERMINATIONS UNDER THE SERVICE CONTRACT ACT" (SCA), ATTACHED HERETO AND MADE A PART OF THIS MODIFICATION. ***If contractor anticipates a claim to revise prices in accordance with FAR 52.222-43, contractor shall notify GSA within 30 days after acceptance of this modification.***  
Note that if the request to revise prices in accordance with FAR 52.222-43 is accepted and processed, all future price increases for SCA eligible categories in the contract shall only be allowed in accordance with FAR 52.222- 43. Existing economic price adjustment methods (i.e. annual escalation) will be removed for SCA categories. After a modification is approved to increase prices in accordance with FAR 52.222-43, that pricing for the SCA labor categories will not increase until a future Index of Wage Determinations is incorporated into the contract and an acceptable modification request in accordance with FAR 52.222-43 is received and processed.

3. **SIN REVISIONS:**  
***The scope of SIN 874-501 is modified to incorporate SIN 874-502 as follows:***

**SIN 874-501: Supply and Value Chain Management Services:** Services that include all phases of planning, acquisition and management of logistics systems. These services include, but are not limited to planning, acquisition, design, development, testing, production, fielding, management, operation, maintenance, sustainment, improvement, modification and disposal. Examples of the type of services that may be performed under this SIN include: Logistics consulting for planning for the acquisition and life cycle phases of supply and value chain systems including the following: defining and establishing program objectives, strategies, plans and schedules; develop milestone documentation; market research and acquisition planning; material requirements identification, planning, acquisition and management; develop specifications or performance based work statements and task estimates; develop, document and support maintenance procedures and technical manuals; configuration data management and related documentation; expansion and consolidation studies, field problem analysis and recommendation of corrective actions and system modernization; Needs assessment/system assessment; Inventory/asset/vendor management; Inventory management and operation (inclusive of salvage, recycle and/or disposal management); operation of warehouses, stockrooms, storage facilities or depots; Fulfillment systems and operations; platform management; Information logistics processing systems analysis design, and implementation; staging, shipping, receiving, packing, crating, moving and storage (excluding household goods); packaging, labeling, bar coding system consultation, design, implementation, operation and maintenance; design and installation of material handling systems; hazardous material storage and handling (Non-radioactive only); warehouse and location management systems; recycling program management of

warehousing materials; preservation and protection of specialized inventory or documents; maintenance, repair and overhaul (MRO) support and/or support process management; aircraft repair and maintenance; ship repair and maintenance; property disposal management; logistics strategic planning services; logistics systems engineering services; logistics program management services and support; Unique Identification (UID)/Radio Frequency Identification (RFID) services; Program and project management; acquisition and life cycle management; spares modeling; supply chain integration planning; global integrated supply chain solutions – planning and implementation. (note – acquisition functions can not be procured as stand-alone services).

**SIN 874-502 is reserved.**

**The scope of SIN 874-503 is modified as follows:**

**SIN 874-503: Distribution and Transportation Logistics Service:** Services that include distribution and transportation logistics services such as planning and designing, implementing or operating systems or facilities for the movement of supplies, equipment or people by road, air, water or rail. Examples of the type of services that may be performed under this SIN include but are not limited to: movement and short-term storage (excluding household goods); transportation system development and management; distribution and transportation logistics consulting; carrier management and routing; freight forwarding, consolidation and management; third-party logistics (3PL); facilitating customs processing; Electronic Freight Manifest (EFM) systems; tracking system analysis, design, operations and management; shuttle services; program and project management. ***Note: Commercial passenger airline services covered by the Airline City Pair Program and courier services covered by Schedule 48, Transportation, Delivery and Relocation Solutions are excluded.***

**The scope of SIN 874-504 is modified as follows**

**SIN 874-504: Deployment Logistics Services:** Services that include, but are not limited to providing expert advice, assistance, guidance, management, or operational support services that permit the deployment of supplies, equipment, materials and associated personnel. Examples of the type of services that may be performed under this SIN include deployment logistics consulting; war gaming (field exercises); contingency planning; inventory and property requirements planning, movement, storage and accountability systems; asset management (including pre-positioning assets); space planning and project integration/implementation; public and private sector support and/or resources; facilitating customs processing/accountability; scenario based field exercises; communication and logistics systems design, plan, deployment and operation; medical and emergency unit storage and restocking management; program and project management.

**The scope of SIN 874-505 remains unchanged.**

**The scope of SIN 874-506 is modified as follows**

**SIN 874-506: 874-506 Support Products:** Contractors may provide ancillary products used only in direct support of services provided under SINs 874-501, 874-503, 874-504, 874-505 and 874-507. ***This SIN cannot be used as a stand alone SIN.*** The acquisition of commercial-off-the-shelf (COTS) hardware and software (other than in support of logistics related services) under this SIN is not allowed.

*Note: Any licensing fee/agreements required for COTS hardware and software will be negotiated at the task order level*

**The scope of SIN 874-507 is modified as follows**

**SIN 874-507: Operations & Maintenance Logistics Management and Support Services:** The purpose of this SIN is to provide a turnkey/total solution in support of a logistics function. Under the turnkey solution, a combination of support services may include, but are not limited to: janitorial services, maintenance, trash disposal, laundry, mail routing, guard, reception and related services however these services must be incidental to and in support of the logistics function. Individual support services may not be offered, ordered, or sold separately under this SIN. Examples of the type of logistics related services under this SIN include: logistical support services; integrated facility management and operations management support; supply support services; equipment asset management and maintenance support services; fleet management and maintenance support services; preventative maintenance planning support services; property management and maintenance support services; strategic and tactical planning support services; strategic account management support services; mobile utility support equipment operation, maintenance and repair support services; Base operations support (BOS); depot maintenance; project management. ***Note: For separate SIN requirements NOT a part of logistics management and support, refer to Schedule 03FAC, Facilities Maintenance and Hardware, SIN(s) 811 002, Complete Facilities Maintenance 811 003, Complete Facilities Management.***

Contractors are strongly encouraged to team with other GSA Schedule holders for the services noted above. Excluded from this SIN are services involving construction and the operation of Information Technology Centers.

**4. SIN ADDITION: The following SIN is added to the Logistics Worldwide (LOGWORLD) Schedule:**

**SIN 874-597 –Ancillary Repair and Alteration:** Repair and alteration ancillary to existing SINs under this Schedule. Ancillary Repair and Alteration projects are those (1) solely associated with the repair, alteration, delivery or installation of products or services also purchased under this Schedule, and which are (2) routine and non-complex in nature, such as routine painting or carpeting, simple hanging of drywall, basic electrical or plumbing work, landscaping, and similar noncomplex services. This SIN EXCLUDES: (1) major or new construction of buildings, roads, parking lots and other facilities; (2) complex repair and alteration of entire facilities or significant portions of facilities, and (3) Architect-Engineering Services subject to Public Law 92-582 (Brooks Act). This SIN includes all regulatory guidance outlined in accordance with FAR 36, including the Davis Bacon Act and the Miller Act.

***\*Ancillary Repair and Alteration shall not be the primary purpose of the work ordered but be an integral part of the total solution offered. Ancillary Repair and Alteration services may only be ordered in conjunction with or in support of products or services purchased under this Federal Supply Schedule contract and contractor must have SINs 874-501, 874-503 and/or 874-504 in order to be considered for award under this SIN.***

***\*Orders for ancillary repair and alteration must be incidental to the overall task and can only be placed in conjunction with orders for services under the Federal Supply Schedule, solicitation number TFTP-MB-008745-B under to the above noted SIN.***

***\*Contractors may subcontract ancillary repair and alteration but are responsible for insuring that the scope of work is incidental to the overall task performed, services are***

*completed and all warranties are honored. Subcontractors must be licensed and bonded. Compliance with all local laws, regulations and ordinances is the responsibility of the prime contractor. The prime contractor shall accept full responsibility and liability for all work performed by subcontractors under a resultant delivery/task order. The Government reserves the right to apply liquidated damages whenever the required delivery is not met. All construction related contract clauses and Davis-Bacon regulations as shown in this document will apply to agency orders placed against the schedule contract. It is the agency's responsibility to define the required scope of work required and to comply with the construction related contract clauses and Davis-Bacon regulations. Performance clauses will be modified for each job by the requiring agency. Agencies may negotiate on a project-by-project basis and identify the ancillary repair and alteration work and associated prices as separate line items. All orders must be placed with the prime contractor and all payments made to the prime contractor. All ancillary repair and alteration must be guaranteed for any defect in workmanship and materials For federally-owned space managed by GSA's Public Building Service (PBS), approval of the repair and alteration must be received by the ordering agency and contractor before any work may be ordered. A copy of the approval must be retained by both the ordering agency contracting officer and the contractor. Owned or leased space outside the PBS inventory may also include approval requirements. A copy of this approval must also be retained by both parties. Any agency contracting officer ordering services under this SIN for Repair and Alteration is responsible for complying with his/her agency's internal policies when procuring these types of services. This may include a specific warrant delegation for procuring construction services when the estimated amount of this portion of the task exceeds \$2,000 (Ref. FAR 22.4).*

*\*Special Notice to Ordering Agencies: GSA or other landlords may require re-performance of any nonconforming work at the agency expense. If applicable, agencies may seek appropriate recourse from the contractor responsible for the nonconforming work.*

*\*Special Proposal Instructions related to SIN 874-597, Ancillary Repair and Alteration: The Ancillary Repair and Alteration work must be incidental to the primary services offered under the Schedule. Firms offering Ancillary Repair and Alteration services in accordance with SIN(s) 874-597 must:*

*\*Submit pricing based on an established "commercial price list" or "market based prices". In either event, the offeror must provide adequate price supporting information/data in the form of invoices, contracts or some similar documentation. Invoices must be less than one year old. (Note - The RS Means is also considered an appropriate pricing guide to aid in the support of proposed pricing).*

*\*Services must be priced in accordance with FAR 8.404(d), and will be either hourly rates or fixed price for performance of a specific task (e.g. installation, maintenance and repair).*

*\*The proposed pricing must include sufficient information for each service offered to enable the reviewing contracting officer to perform a price analysis in accordance with FAR 15.404-1.*

- 5. Contractors who take exception to the mass modification must contact the PCO (listed in GSA's e-library with your firm's contract information) within 10 days after receipt of modification.** Any exceptions to this modification will be negotiated on a case-by-case basis.

- 6. The following clauses are added to the contract and apply to all SINs:**

- 52.203-5 Covenant Against Contingent Fees (Apr 1984)
- 52.203-7 Anti-Kickback Procedures (Jul 1995)
- 52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (Jan 1997)
- 52.212-4 Contract Terms and Conditions – Commercial Item (Feb 2007) (Alternate I – Feb 2007)
- 52.212-4 Contract Terms and Conditions – Commercial Items (Feb 2007) (Deviation Feb 2007)
- 52.217-8 Option to Extend Services (Nov 1999)
- 52.219-28 Post-Award Small Business Program Re-representation (Jun 2007)
- 52.222-29 Notification of Visa Denial (June 2003)
- 52.223-5 Pollution Prevention and Right-to-Know Information (Aug 2003) (Alternate I –Aug 2003)
- 52.223-10 Waste Reduction Program (Aug 2000)
- 52.229-3 Federal, State, and Local Taxes (Apr 2003) (Deviation I – Feb 2007)
- 52.237-1 Site Visit (Apr 1984)
- 52.237-2 Protection of Government Buildings, Equipment, and Vegetation (Apr 1984)
- 52.242-15 Stop-Work Order (Aug 1989)
- 552.211-75 Preservation, Packaging, and Packing (FEB 1996) (Alternate I – May 2003)
- 552.211-77 Packing List (Feb 1996) (Alternate I – May 2003)
- 552.211-82 Notice of Shipment (Feb 1996)
- 552.232-79 Payment by Credit Card (May 2003)
- 552.232-81 Payment by Non-Federal Ordering Activities (May 2003)
- 552.238-72 Identification of Products that have Environmental Attributes (Sep 2003)
- 552.238-76 Definition (Federal Supply Schedules) – Recovery Purchasing (Feb 2007)
- 552.238-78 Scope of Contract (Eligible Ordering Activities ) (May 2004) (Alternate I – Feb 2007)
- 552.238-80 Use of Federal Supply Contracts by Certain Entities – Recovery Purchasing (Feb 2007)

**The following clauses are added to the contract and apply ONLY to SIN 874-597, Ancillary Repair and Alteration:**

- 52.211-10 Commencement, Prosecution, and Completion of Work (Apr 1984)
- 52.211-12 Liquidated Damages – Construction (Sep 2000)
- 52.211-13 Time Extensions (Sep 2000)
- 52.215-2 Audits and Records - Negotiations ( Jun 1999)
- 52.215-11 Price Reduction for Defective Cost or Pricing Data – Modifications (Oct 1997) (applicable to modifications equal to or exceeding \$500,000 and no exception apply)
- 52.215-13 Subcontractor Cost or Pricing Data – Modifications (Oct 1997) (applicable to modifications equal to or exceeding \$500,000 and no exceptions apply)
- 52.215-15 Pension Adjustments and Asset Reversions (Oct 2004)
- 52.215-18 Reversion or Adjustments of Plans for Post Retirement Benefits Other than Pensions (Jul 2005)
- 52.222-4 Contract Work Hours and Safety Standards Act – Overtime Compensation (Jul 2005)

- 52.222-6 Davis-Bacon Act (Jul 2005)
- 52.222-7 Withholding of Funds (Feb 1988)
- 52.222-8 Payrolls and Basic Records (Feb 1988)
- 52.222-9 Apprentices and Trainees (Jul 2005)
- 52.222-10 Compliance with Copeland Act Requirements (Feb 1988)
- 52.222-11 Subcontracts (Labor Standards) (Jul 2005)
- 52.222-12 Contract Termination – Debarment (Feb 1988)
- 52.222-13 Compliance with Davis-Bacon and Related Act Regulations (Feb 1988)
- 52.222-14 Disputes Concerning Labor Standards (Feb 1988)
- 52.222-15 Certification of Eligibility (Feb 1988)
- 52.222-16 Approval of Wage Rates (Feb 1988)
- 52.222-27 Affirmative Action Compliance Requirements for Construction (Feb 1999)
- 52.222-30 Davis Bacon Act – Price Adjustment (None or Separately Specified Pricing Method) (Dec 2001)
- 52.222-31 Davis-Bacon Act – Price Adjustment (Percentage Method) (Dec 2001)
- 52.222-32 Davis-Bacon Act – Price Adjustment (Actual Method) (Dec 2001)
- 52.223-6 Drug-Free Workplace (May 2001)
- 52.223-11 Ozone-depleting Substances (May 2001)
- 52.223-12 Refrigeration Equipment and Air Conditions (May 1995)
- 52.223-13 Certification of Toxic Chemical Release Reporting (Aug 2003)
- 52.223-14 Toxic Chemical Release Reporting (Aug 2003)
- 52.225-9 Buy American Act – Construction Materials (Jan 2005) (under \$6,841,000)
- 52.225-10 Notice of Buy American Act Construction Materials (May 2002)
- 52.225-11 Buy American Act Construction Materials under Trade Agreements (Aug 2007) (over \$6,481,000)
- 52.225-12 Notice of Buy American Construction Materials under Trade Agreements (Jan 2005)
- 52.225-14 Inconsistency Between English Version and Translation of Contract (Feb 2000)
- 52.227-1 Authorization and Consent (Dec 2007)
- 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (Aug 1996)
- 52.227-4 Patent Indemnity – Construction Contracts (Dec 2007)
- 52.228-1 Bid Guarantee ( Sep 1996)
- 52.228-2 Additional Bond Security (Oct 1997)
- 52.228-11 Pledges of Assets (Feb 1992)
- 52.228-12 Prospective Subcontractor (Oct 1995)
- 52.228-13 Alternate Payment Protections (Jul 2000)
- 52.228-14 Irrevocable letter of Credit (Dec 1999)
- 52.228-15 Performance and Payment Bonds Construction (Nov 2006)
- 52.232-5 Payments under Fixed Price Construction Contracts (Sep 2002)
- 52.232-27 Prompt Payment for Construction Contracts (Sep 2005)
- 52.233-1 Disputes (Feb 2002) Alternate I (Dec 1991)
- 52.233-2 Service of Protest (Sep 2006)
- 52.233-3 Protest after Award (Aug 1996)
- 52.236-2 Differing Site Conditions (Apr 1984)
- 52.236-3 Site Investigations and Conditions Affecting the Work (Apr 1984)
- 52.236-5 Materials and Workmanship (Apr 1984)
- 52.236-6 Superintendence by the Contractor (Apr 1984)

- 52.236-7 Permits and Responsibilities (Nov 1991)
- 52.236-8 Other Contracts (Apr 1984)
- 52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements (Apr 1984)
- 52.236-10 Operations and Storage Areas (Apr 1984)
- 52.236-11 Use and Possession Prior to Completion (Apr 1984)
- 52.236-12 Cleaning Up (Apr 1984)
- 52.236-13 Accident Prevention (Nov 1991) (Alternate I - Nov 1991)
- 52.236-14 Availability and Use of Utility Services (Apr 1984)
- 52.236-15 Schedules for Construction Contracts (Apr 1984)
- 52.236-17 Layout of Work (Apr 1984)
- 52.236-26 Pre-Construction Conference (Feb 1995)
- 52.236-28 Preparation of Proposals – Construction (Oct 1997)
- 52.242-14 Suspension of Work (Apr 1984)
- 52.243-4 Changes (Jun 2007)
- 52.243-6 Change Order Accounting (Apr 1984)
- 52.244-2 Subcontracts (fixed Price Contracts (Jun 2007)
- 52.244-6 Subcontracts for Commercial Items (Mar 2007)
- 52.246-12 Inspection of Construction (Aug 1996)
- 52.246-21 Warranty of Construction (Mar 1994) (Alternate I - Apr 1984)
- 52.247-63 Preference for U.S. – Flag Air Carriers (Jun 2003)
- 52.248-3 Value Engineering Construction (Sep 2006) (Alternate I - Apr 1984)
- 52.249-2 Termination for Convenience of the Government (Fixed Price) (May 2004) (Alternate I Sep 1996)
- 52.249-10 Default (Fixed Price – Construction) (Apr 1984)
- 552.211-71 Standard References (Sep 1999)
- 552.211-84 Non-Compliance with Contract Requirements (Feb 1996)
- 552.215-70 Examinations of Records by GSA (Feb 1996)
- 552.236-70 Definitions
- 552.236-71 Authorities and Limitations (Apr 1984)
- 552.236-72 Specialist (Apr 1984)
- 552.236-74 Working Hours (Apr 1984)
- 552.236-75 Use of Premises (Apr 1984)
- 552.236-76 Measurements (Apr 1984)
- 552.236-79 Samples (Apr 1984)
- 552.236-80 Heat (Apr 1984)
- 552.236-81 Use of Equipment by the Government (Apr 1984)
- 552.236-82 Subcontracts (Apr 1984)
- 552.243-70 Pricing of Adjustments (Apr 1989)
- 552.243-71 Equitable Adjustments (Apr 1984)
- 552.246-72 Final Inspection and Tests (Sep 1999)
- 552.246-75 Guarantees (May 1989)
- 552.252-6 Authorized Deviations in Clauses (Sep 1999) (Deviation 52.252-6)

**The following clauses are *updated* to a new version in the contract:**

- 52.204-9 Personal Identity Verification of Contractor Personnel (Sep 2007)
- 52.212-5 Contract Terms and Conditions Required To Implement Statutes Or Executive Orders – Commercial Items (Feb 2008)
- 52.216-19 Order Limitations (Oct 1995)(Deviation II – Feb 2007)
- 52.222-19 Child Labor – Cooperation with Authorities and Remedies (Feb 2008)



- 52.222-41 Service Contract Act of 1965 (Nov 2007)
- 52.225-5 Trade Agreements (Nov 2007)
- 52.232-17 Interest (Jun 1996) (Deviation I – May 2003)
- 52.232-34 Payment By Electronic Funds Transfer – Other Than Central Contractor Registration (May 1999) (Deviation – Feb 2007)
- 52.232-36 Payment by a Third Party )May 1999) (Deviation I – May 2003)
- 52.237-3 Continuity of Services (Jan 1991) (Deviation I – May 2003)
- 52.246-4 Inspection of Services – Fixed Price (Aug 1996) (Deviation I – May 2003)
- 52.247-38 F.O.B Inland Carrier, Point of Exportation (Feb 2006)(Deviation I – Feb 2007)
- 52.247-64 Preference for Privately Owned U.S. Flag Commercial Vessels (Feb 2006)
- 552.216-72 Placement of Orders (Sep 1999) (Alternative IV – Feb 2007)
- 552.232-8 Discounts for Prompt Payment (Apr 1989) (Deviation Far 52.232-8) (Alternate I – May 2003) 552.238-72 Identification of Energy-Efficient Office Equipment and Supplies Containing Recovered Materials or Other Environmental Attributes (Sep 1999)
- 552.238-71 Submission and Distribution of Authorized FSS Schedule Price Lists (Sep 1999) (Deviation I – Dec 2004)
- 552.238-75 Price Reduction (May 2004) (Alternate I – May 2003)
- 552.246-73 Warranty – Multiple Award Schedule (Mar 2000) (Alternate I – May 2003)

**The following clauses are *deleted* from the Contract:**

- 52.204-7 Central Contractor Registration (Oct 2003)
- 52.209-6 Protecting the Government’s Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Sep 2006)
- 52.212-4 Contract terms and Conditions – Commercial Items (Feb 2007)
- 52.246-6 Inspection –Time-And-Material and Labor-Hour (May 2001)
- 552.232-77 Payment by Government wide Commercial Purchase Card (Mar 2000) (Alternate I – Mar 2000)
- 552.237-71 Qualifications of Employees (May 1989)
- C-10FT-500 Delivery Schedule (Commercial Professional Services)
- F-FSS-202-F Delivery Prices (Apr 1984)
- F-FSS-230 Deliveries to the U.S Postal Service (Jan 1994)
- G-FSS-907 Order Acknowledgement (Apr 1984)
- I-FSS-95 Re-Representation of Size Status for Option Periods (Jun 2003)
- I-FSS-103 Scope of Contracts – Worldwide (Jul 2002)
- I-FSS-125 Requirements Exceeding the Maximum Order (Sept 1999)
- I-FSS-249-B Default (May 2000)

**52.203-5 Covenant Against Contingent Fees (Apr 1984)**

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence. "Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence. "Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract. "Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

**52.203-7 Anti-Kickback Procedures (Jul 1995)**

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58 <http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t41t42+2+13++%2841%29%20%20AND%20%28%2841%29%20ADJ%20USC%29%3A CITE%20%20%20%20%20%20%20%20%20%20>) (the Act), prohibits any person from—

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including paragraph (c)(5) but excepting paragraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

**52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (Jan 1997)**

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act ([41 U.S.C. 423](#))

<http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t41t42+2+13++%2841%29%20%20AND%20%28%2841%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20%20%20%20>(the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may—

- (1) Cancel the solicitation, if the contract has not yet been awarded or issued; or
- (2) Rescind the contract with respect to which—
  - (i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either—
    - (A) Exchanging the information covered by such subsections for anything of value; or
    - (B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or
  - (ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.
- (b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
- (c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

## 52.204-9 Personal Identity Verification of Contractor Personnel (SEP 2007)

- (a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24, and Federal Information Processing Standards Publication (FIPS PUB) Number 201.
- (b) The Contractor shall insert this clause in all subcontracts when the subcontractor is required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

### 52.211-10 Commencement, Prosecution, and Completion of Work (Apr 1984)

The Contractor shall be required to (a) commence work under this contract within (determined at the task order level) calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than (determined at the task order level).\* The time stated for completion shall include final cleanup of the premises. \*(note – The contracting officer shall specify either a number of days after the date the contractor receives the notice to proceed, or a calendar date).

### 52.211-12 Liquidated Damages—Construction (Sept 2000)

- (a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of (determined at the task order level) for each calendar day of delay until the work is completed or accepted.
- (b) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

### 52.211-13 Time Extensions (Sept 2000)

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

**52.212-4 Contract Terms and Conditions – Commercial Items (Feb 2007) (Alternate I --Feb 2007)**

- (a) *Inspection/Acceptance.*
- (1) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government will perform inspections and tests in a manner that will not unduly delay the work.
- (2) If the Government performs inspection or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (3) Unless otherwise specified in the contract, the Government will accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they will be presumed accepted 60 days after the date of delivery, unless accepted earlier.
- (4) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the

Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (a)(6) of this clause, the cost of replacement or correction shall be determined under paragraph (i) of this clause, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified below, the portion of the "hourly rate" attributable to profit shall be 10 percent. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(5) (i) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may--

(A) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(B) Terminate this contract for cause.

(ii) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute under the Disputes clause of the contract.

(6) Notwithstanding paragraphs (a)(4) and (5) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to--

(i) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or

(ii) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(7) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(8) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.

(9) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.*

(I) The clause at FAR 52.202-1, Definitions, is incorporated herein by reference. As used in this clause

(i) Direct materials mean those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

(ii) Hourly rate means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are

(A) Performed by the contractor;

(B) Performed by the subcontractors; or

(C) Transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

(iii) Materials means--

(A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;

(B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;

(C) Other direct costs (e.g., incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.);

(D) The following subcontracts for services which are specifically excluded from the hourly rate: All; and

(E) Indirect costs specifically provided for in this clause.

(iv) "Subcontract" means any contract, as defined in FAR Subpart 2.1, entered into with a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract including transfers between divisions, subsidiaries, or affiliates of a contractor or subcontractor. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.*

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include-

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, contract line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer-Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payments.*

(1) Services accepted. Payment shall be made for services accepted by the Government that have been delivered to the delivery destination(s) set forth in this contract. The Government will pay the Contractor as follows upon the submission of commercial invoices approved by the Contracting Officer:

(i) Hourly rate.

(A) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed. Fractional parts of an hour shall be payable on a prorated basis.

(B) The rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by individuals that do not meet the qualifications specified in the contract, unless specifically authorized by the Contracting Officer.

(C) Invoices may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) to the Contracting Officer or the authorized representative.

(D) When requested by the Contracting Officer or the authorized representative, the Contractor shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract.

(E) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis.

(1) If no overtime rates are provided in the Schedule and the Contracting Officer approves overtime work in advance, overtime rates shall be negotiated.

(2) Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract.

(3) If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(ii) *Materials.*

(A) If the Contractor furnishes materials that meet the definition of a commercial item at FAR 2.101, the price to be paid for such materials shall be the contractor's established catalog or market price, adjusted to reflect then

(1) Quantities being acquired; and

(2) Any modifications necessary because of contract requirements.

(B) Except as provided for in paragraph (i)(1)(ii)(A) and (D)(2) of this clause, the Government will reimburse the Contractor the actual cost of materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the contract) provided the Contractor

(1) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or

(2) Makes these payments within 30 days of the submission of the Contractor's payment request to the Government and such payment is in accordance with the terms and conditions of the agreement or invoice.

(C) To the extent able, the Contractor shall

(1) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(2) Give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that are identifiable to the contract.

(D) Other Costs. Unless listed below, other direct and indirect costs will not be reimbursed.

(I) Other Direct Costs. The Government will reimburse the Contractor on the basis of actual cost for the following, provided such costs comply with the requirements in paragraph (i)(I)(ii)(B) of this clause: Each order must list separately the elements of other direct charge(s) for that order or, if no reimbursement for other direct costs will be provided, insert "none".

(2) Indirect Costs (Material Handling, Subcontract Administration, etc.). The Government will reimburse the Contractor for indirect costs on a pro-rata basis over the period of contract performance at the following fixed price: Each order must list separately the fixed amount for the indirect costs and payment schedule or, if no reimbursement for indirect costs, insert "None".

(2) Total cost. It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performance of this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(3) Ceiling price. The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer notifies the Contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(4) Access to records. At any time before final payment under this contract, the Contracting Officer (or authorized representative) will have access to the following (access shall be limited to the listing below unless otherwise agreed to by the Contractor and the Contracting Officer):

(i) Records that verify that the employees whose time has been included in any invoice meet the qualifications for the labor categories specified in the contract;

(ii) For labor hours (including any subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment--

(A) The original timecards (paper-based or electronic);

(B) The Contractor's timekeeping procedures;

(C) Contractor records that show the distribution of labor between jobs or contracts; and

(D) Employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.

(iii) For material and subcontract costs that are reimbursed on the basis of actual cost--

(A) Any invoices or subcontract agreements substantiating material costs; and

(B) Any documents supporting payment of those invoices.

(5) Overpayments/Underpayments.

(i) Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. The Contractor shall promptly pay any such reduction within 30 days unless the parties agree otherwise. The Government within 30 days will pay any such increases, unless the parties agree otherwise. The contractor's payment will be made by check. If the Contractor becomes aware of a duplicate invoice payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(ii) Upon receipt and approval of the invoice designated by the Contractor as the "completion invoice" and supporting documentation, and upon compliance by the Contractor with all terms of this contract, any outstanding balances will be paid within 30 days unless the parties agree otherwise. The completion invoice, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(6) Release of claims. The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions.

(i) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the Contractor.

(ii) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(7) Prompt payment. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(8) Electronic Funds Transfer (EFT). If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(9) Discount. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(j) *Risk of loss*. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes*. The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience*. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the contract, less any hourly rate payments already made to the Contractor plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system that have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(m) *Termination for cause*. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title*. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty*. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability*. Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances*. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts*. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) *Order of precedence*. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (1) the schedule of supplies/services; (2) the Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause; (3) the clause at 52.212-5; (4) addenda to this solicitation or contract, including any license agreements for computer software; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) the Standard Form 1449; (8) other documents, exhibits, and attachments; and (9) the specification.

(t) *Central Contractor Registration (CCR)*.

(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2) (i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of subpart 42.12; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

#### **52.212-4 Contract Terms and Conditions- Commercial Items (Feb 2007) (Deviation Feb 2007)**

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the ordering activity may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The ordering activity must exercise its postacceptance rights

- (1) within a reasonable time after the defect was discovered or should have been discovered; and
- (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the credit card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the ordering activity in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.*

- (1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—
  - (i) Name and address of the Contractor;
  - (ii) Invoice date and number;
  - (iii) Contract number, contract line item number and, if applicable, the order number;
  - (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
  - (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on an ordering activity bill of lading;
  - (vi) Terms of any discount for prompt payment offered;
  - (vii) Name and address of official to whom payment is to be sent;
  - (viii) Name, title, and phone number of person to notify in event of defective invoice; and
  - (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
  - (x) Electronic funds transfer (EFT) banking information.
    - (A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.



(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer—Other Than Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the ordering activity waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(h) *Patent indemnity.* The Contractor shall indemnify the ordering activity and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.*

(1) Items accepted. Payment shall be made for items accepted by the ordering activity that have been delivered to the delivery destinations set forth in this contract.

(2) Prompt payment. The ordering activity will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR Part 1315.

(3) Electronic Funds Transfer (EFT). If the ordering activity makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) Discount. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the ordering activity has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the ordering activity upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the ordering activity at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Ordering Activity's convenience.* The ordering activity reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the ordering activity using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the ordering activity any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The ordering activity may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the ordering activity, upon request, with adequate assurances of future performance. In the event of termination for cause, the ordering activity shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the ordering activity for any and all rights and remedies provided by law. If it is determined that the ordering activity improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the ordering activity upon acceptance, regardless of when or where the ordering activity takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to ordering activity contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (1) the schedule of supplies/services; (2) the Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to ordering activity Contracts paragraphs of this clause; (3) the clause at 52.212-5; (4) addenda to this solicitation or contract, including any license agreements for computer software; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) the Standard Form 1449; (8) other documents, exhibits, and attachments; and (9) the specification.

(t) *Central Contractor Registration (CCR).*

(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the ordering activity's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2) (i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of subpart 42.12; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

#### **52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items (Feb 2008)**

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(2) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [Contracting Officer check as appropriate. ]

Number	Title	Clause/Provision
52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006) (ALTERNATE I – OCT 1995)	
52.204-9	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (SEP 2007)	
52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN (NOV 2007) (ALTERNATE II – OCT 2001)	

52.219-16	LIQUIDATED DAMAGES--SUBCONTRACTING PLAN (JAN 1999)
52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)
52.219-28	POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (JUN 2007)
52.222-19	CHILD LABOR – COOPERATION WITH AUTHORITIES AND REMEDIES (FEB 2008)
52.222-21	PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)
52.222-26	EQUAL OPPORTUNITY (MAR 2007)
52.222-3	CONVICT LABOR (JUN 2003)
52.222-35	EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)
52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)
52.222-37	EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)
52.222-39	NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)
52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2006)
52.225-5	TRADE AGREEMENTS (NOV 2007)
52.232-33	PAYMENT BY ELECTRONIC FUNDS TRANSFER -CENTRAL CONTRACTOR REGISTRATION (OCT 2003)
52.232-36	PAYMENT BY THIRD PARTY (MAY 1999) (DEVIATION I – MAY 2003)
52.239-1	PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [Contracting Officer check as appropriate.]

**Number Title Clause/Provision**

52.222-41 SERVICE CONTRACT ACT OF 1965 (NOV 2007)

52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)

52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT-- PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (NOV 2006)

(d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records-Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made

available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) (I) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vi) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause-

(i) 52.219-8, Utilization of Small Business Concerns (MAY 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract, (except subcontracts to small business concerns), exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (MAR 2007) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006) (38 U.S.C. 4212).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).

(v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201).

(vi) 52.222-41, Service Contract Act of 1965 (NOV 2007) (41 U.S.C. 351, et seq.).

(vii) 52.222-50, Combating Trafficking in Persons (AUG 2007) (22 U.S.C. 7104(g)). Flow down required in accordance with paragraph (f) of FAR clause 52.222-50.

(viii) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (NOV 2007) (41 U.S.C. 351, et seq.).

(ix) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services--Requirements (NOV 2007) (41 U.S.C. 351, et seq.).

(x) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx 1241 (b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

## **52.215-2 Audit and Records—Negotiation.**

(a) As used in this clause, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor’s plants, or parts of them, engaged in performing the contract.

(c) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor’s records, including computations and projections, related to—

- (1) The proposal for the contract, subcontract, or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the contract, subcontract, or modification; or
- (4) Performance of the contract, subcontract or modification.

(d) Comptroller General—

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor’s directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating—

- (1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and
  - (2) The data reported.
- (f) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—
- (1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
  - (2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.
- (g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and—
- (1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
  - (2) For which cost or pricing data are required; or
  - (3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.
- The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

#### **52.215-11 Price Reduction for Defective Cost or Pricing Data—Modifications. (Oct 1997)**

- (a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4 except that this clause does not apply to any modification if an exception under FAR 15.403-1 applies.
- (b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.
- (c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—
- (1) The actual subcontract; or
  - (2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
- (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
  - (ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.
  - (iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.
  - (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2)(i) Except as prohibited by paragraph (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—
- (A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
  - (B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if—
- (A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or
  - (B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

- (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 662(a)(2) and
- (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

#### **52.215-13 Subcontractor Cost or Pricing Data - Modifications. (Oct 1997)**

(a) The requirements of paragraphs (b) and (c) of this clause shall—

- (1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR15.403-4; and
- (2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR15.403-4 applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR15.403-4 on the date of agreement on price or the date of award, whichever is later.

#### **52.215-15 Pension Adjustments and Asset Reversions. (Oct 2004)**

(a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.

(b) For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment shall be—

- (1) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99), the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12); and
- (2) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.

(c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to FAR Subpart 31.2.

(d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR15.408 (g).

#### **52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions. (July 2005)**

(a) The Contractor shall promptly notify the Contracting Officer in writing when the Contractor determines that it will terminate or reduce the benefits of a PRB plan.

(b) If PRB fund assets revert or inure to the Contractor, or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by 31.205-6 (o)(5) of the Federal Acquisition Regulation (FAR). When determining or agreeing on the method for recovery of the Government's equitable share, the contracting parties should consider the following methods: cost reduction, amortizing the credit over a number of years (with appropriate interest), cash refund, or some other agreed upon method. Should the parties be unable to agree on the method for recovery of the Government's equitable share, through good faith negotiations, the Contracting Officer shall designate the method of recovery.

(c) The Contractor shall insert the substance of this clause in all subcontracts that meet the applicability requirements of FAR 15.408 (j).

#### **52.216-19 Order Limitations (Oct 1995) (Deviation II - Feb 2007)**

(a) Minimum order. When the ordering activity requires supplies or services covered by this contract in an amount of less than \$100.00, the ordering activity is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) Maximum order. The Contractor is not obligated to honor—

- (1) Any order for a single item in excess of \$5 million;
- (2) Any order for a combination of items in excess of \$5 million; or
- (3) A series of orders from the same ordering office within 7 days, that together call for quantities exceeding the limitation in paragraph (b) (1) or (2) of this section.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the ordering activity is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 7 days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the ordering activity may acquire the supplies or services from another source.

#### **52.217-8 Option to Extend Services (Nov 1999)**

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within no later than the contract expiration date. .

#### **52.219-28 Post Award Small Business Program Re-Representation (Jun 2007)**

(a) Definitions. As used in this clause--

*Long-term contract* means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8 Option to Extend Services, or other appropriate authority.

*Small business concern* means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause.

(b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall rerepresent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:

- (1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.
- (2) Within 30 days after a merger or acquisition that does not require a novation or within 30 day after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.
- (3) For long-term contracts--
  - (i) Within 60 to 120 days prior to the end of the fifth year of the contract; and
  - (ii) Within 60 to 120 days prior to the exercise date specified in the contract for any option thereafter.

(c) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding to this NAICS code can be found at <http://www.sba.gov/services/contractingopportunities/sizestandardtopics/>.

(d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

(e) Except as provided in paragraph (g) of this clause, the Contractor shall make the rerepresentation required by paragraph (b) of this clause by validating or updating all its representations in the Online Representations and Certifications Application and its data in the Central Contractor Registration, as necessary, to ensure they reflect current status. The Contractor shall notify the contracting office by e-mail, or otherwise in writing, that the data have been validated or updated, and provide the date of the validation or update.

(f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.

(g) If the Contractor does not have representations and certifications in ORCA, or does not have a representation in ORCA for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed: The

Contractor represents that it \_\_\_\_\_ is, \_\_\_\_\_ is not a small business concern under NAICS Code \_\_\_\_\_ assigned to contract number \_\_\_\_\_.

#### **52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation. (July 2005)**

(a) Overtime requirements. No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) Violation; liability for unpaid wages; liquidated damages. The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) Payrolls and basic records.

(1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) Subcontracts. The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

#### **Davis-Bacon Act. (July 2005)**

(a) Definition.—“Site of the work”—

(1) Means—

(i) The primary site of the work. The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the “primary site of the work” as defined in paragraph (a)(1)(i), or the “secondary site of the work” as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the “site of the work.” Such permanent, previously established facilities are not a part of the “site of the work” even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction



subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.

(c)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
- (ii) The classification is utilized in the area by the construction industry.
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division  
Employment Standards Administration  
U.S. Department of Labor  
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to paragraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

#### **52.222-7 Withholding of Funds. (Feb 1988)**

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**52.222-8 Payrolls and Basic Records. (Feb 1988)**

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the—

Superintendent of Documents  
U.S. Government Printing Office  
Washington, DC 20402

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

- (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify—
- (i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;
  - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and
  - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.
- (4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**52.222-9 Apprentices and Trainees. (July 2005)**

(a) Apprentices.

- (1) An apprentice will be permitted to work at less than the predetermined rate for the work performed when employed—
- (i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or
  - (ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.
- (2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.
- (3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
- (4) Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the

registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees.

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

(3) In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

#### **52.222-10 Compliance with Copeland Act Requirements. (Feb 1988)**

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

#### **52.222-11 Subcontracts (Labor Standards). July 2005)**

(a) *Definition.* "Construction, alteration or repair," as used in this clause, means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

- (1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;
- (2) Painting and decorating;
- (3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;
- (4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the "site of the work" as defined in the FAR clause at 52.222-6, Davis-Bacon Act of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of work" definition; and
- (5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" definition in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Davis-Bacon Act, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222-6, in the "site of the work" definition).

(b) The Contractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—

- (1) Davis-Bacon Act;
- (2) Contract Work Hours and Safety Standards Act—Overtime Compensation (if the clause is included in this contract);
- (3) Apprentices and Trainees;
- (4) Payrolls and Basic Records;
- (5) Compliance with Copeland Act Requirements;
- (6) Withholding of Funds;
- (7) Subcontracts (Labor Standards);
- (8) Contract Termination—Debarment;
- (9) Disputes Concerning Labor Standards;
- (10) Compliance with Davis-Bacon and Related Act Regulations; and
- (11) Certification of Eligibility.

- (c) The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).
- (d)(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.
- (2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF1413 for such additional subcontract.
- (e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

#### **52.222-12 Contract Termination—Debarment. (Feb 1988)**

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

#### **52.222-13 Compliance with Davis-Bacon and Related Act Regulations. (Feb 1988)**

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are hereby incorporated by reference in this contract.

#### **52.222-14 Disputes Concerning Labor Standards. (Feb 1988)**

The United States Department of Labor has set forth in 29 CFR parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### **52.222-15 Certification of Eligibility. (Feb 1988)**

- (a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001).

#### **52.222-16 Approval of Wage Rates (Feb 1988)**

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this contract must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the contract. Any amount paid by the Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

#### **52.222-19 Child Labor—Cooperation with Authorities and Remedies (Feb 2008)**

- (a) Applicability. This clause does not apply to the extent that the Contractor is supplying end products mined, produced, or manufactured in—
- (1) Canada, and the anticipated value of the acquisition is \$25,000 or more;
  - (2) Israel, and the anticipated value of the acquisition is \$50,000 or more;
  - (3) Mexico, and the anticipated value of the acquisition is \$67,826 or more; or
  - (4) Aruba, Austria, Belgium, Bulgaria, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Korea, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Romania, Singapore, Spain, Sweden, Switzerland, or the United Kingdom and the anticipated value of the acquisition is \$194,000 or more.
- (b) Cooperation with Authorities. To enforce the laws prohibiting the manufacture or importation of products mined, produced, or manufactured by forced or indentured child labor, authorized officials may need to conduct investigations to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under this contract. If the solicitation includes the provision 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products, or the equivalent at 52.212-3(i), the Contractor agrees to cooperate fully with authorized officials of the

contracting agency, the Department of the Treasury, or the Department of Justice by providing reasonable access to records, documents, persons, or premises upon reasonable request by the authorized officials.

(c) Violations. The Government may impose remedies set forth in paragraph (d) for the following violations:

- (1) The Contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor for listed end products.
- (2) The Contractor has failed to cooperate, if required, in accordance with paragraph (b) of this clause, with an investigation of the use of forced or indentured child labor by an Inspector General, Attorney General, or the Secretary of the Treasury.
- (3) The Contractor uses forced or indentured child labor in its mining, production, or manufacturing processes.
- (4) The Contractor has furnished under the contract end products or components that have been mined, produced, or manufactured wholly or in part by forced or indentured child labor. (The Government will not pursue remedies at paragraph (d)(2) or paragraph (d)(3) of this clause unless sufficient evidence indicates that the Contractor knew of the violation.)
- (d) Remedies.
  - (1) The Contracting Officer may terminate the contract.
  - (2) The suspending official may suspend the Contractor in accordance with procedures in FAR Subpart 9.4.
  - (3) The debarring official may debar the Contractor for a period not to exceed 3 years in accordance with the procedures in FAR Subpart 9.4

#### **52.222-27 Affirmative Action Compliance Requirements for Construction. (Feb 1999)**

(a) Definitions. "Covered area," as used in this clause, means the geographical area described in the solicitation for this contract.

"Deputy Assistant Secretary," as used in this clause, means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

"Employer identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly Federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this clause, means—

- (1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- (2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);
- (3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and
- (4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).
- (b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.
- (c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.
- (d) The Contractor shall implement the affirmative action procedures in paragraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.
- (e) Neither the terms nor conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations hereunder.
- (f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- (g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:
  - (1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

- (2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- (3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.
- (4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- (5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under paragraph (g) (2) of this clause.
- (6) Disseminate the Contractor's equal employment policy by—
  - (i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;
  - (ii) Including the policy in any policy manual and in collective bargaining agreements;
  - (iii) Publicizing the policy in the company newspaper, annual report, etc.
  - (iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and
  - (v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.
- (7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.
- (9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- (10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.
- (11) Validate all tests and other selection requirements where required under 41 CFR 60-3.
- (12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.
- (13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.
- (14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user rest rooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.
- (15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.
- (h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in paragraphs (g) (1) through (16) of this clause. The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under paragraphs (g)(1) through (16) of this clause, provided, the Contractor—
  - (1) Actively participates in the group;
  - (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
  - (3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;
  - (4) Makes a good-faith effort to meet its individual goals and timetables; and
  - (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to—

(1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;

(2) Submit reports as may be required by the Government; and

(3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

(o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

#### **52.222-29 Notification of Visa Denial (Jun 2003)**

It is a violation of Executive Order 11246 for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake Island, on the basis that the individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where or for whom the work will be performed (41 CFR 60-1.10). The Contractor shall notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW., Room 6212, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country where this contract will be performed, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.

#### **52.222-30 Davis-Bacon Act—Price Adjustment (None or Separately Specified Method) (Dec 2001)**

(a) The wage determination issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.

(b) The Contracting Officer will make no adjustment in contract price, other than provided for elsewhere in this contract, to cover any increases or decreases in wages and benefits as a result of—

(1) Incorporation of the Department of Labor's wage determination applicable at the exercise of the option to extend the term of the contract;

(2) Incorporation of a wage determination otherwise applied to the contract by operation of law; or

(3) An increase in wages and benefits resulting from any other requirement applicable to workers subject to the Davis-Bacon Act.

#### **52.222-31 Davis-Bacon Act—Price Adjustment (Percentage Method) (Dec 2001)**

(a) The wage determination issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.

(b) The Contracting Officer will adjust the portion of the contract price or contract unit price(s) containing the labor costs subject to the Davis-Bacon Act to provide for an increase in wages and fringe benefits at the exercise of each option to extend the term of the contract in accordance with the following procedures:

(1) The Contracting Officer has determined that the portion of the contract price or contract unit price(s) containing labor costs subject to the Davis-Bacon Act is (determined at the task order level) percent.

- (2) The Contracting Officer will increase the portion of the contract price or contract unit price(s) containing the labor costs subject to the Davis-Bacon Act by the percentage rate published in *(to be identified on the task order)*.
- (c) The Contracting Officer will make the price adjustment at the exercise of each option to extend the term of the contract. This adjustment is the only adjustment that the Contracting Officer will make to cover any increases in wages and benefits as a result of—
- (1) Incorporation of the Department of Labor's wage determination applicable at the exercise of the option to extend the term of the contract;
  - (2) Incorporation of a wage determination otherwise applied to the contract by operation of law; or
  - (3) An increase in wages and benefits resulting from any other requirement applicable to workers subject to the Davis-Bacon Act.

#### 52.222-32 Davis-Bacon Act—Price Adjustment (Actual Method) (Dec 2001)

- (a) The wage determination issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.
- (b)(1) The Contractor states that if the prices in this contract contain an allowance for wage or benefit increases, such allowance will not be included in any request for contract price adjustment submitted under this clause.
- (2) The Contractor shall provide with each request for contract price adjustment under this clause a statement that the prices in the contract do not include any allowance for any increased cost for which adjustment is being requested.
- (c) The Contracting Officer will adjust the contract price or contract unit price labor rates to reflect the Contractor's actual increase or decrease in wages and fringe benefits to the extent that the increase is made to comply with, or the decrease is voluntarily made by the Contractor as a result of—
- (1) Incorporation of the Department of Labor's Davis-Bacon Act wage determination applicable at the exercise of an option to extend the term of the contract; or
  - (2) Incorporation of a Davis-Bacon Act wage determination otherwise applied to the contract by operation of law.
- (d) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.
- (e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a revised wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall notify the Contracting Officer promptly of any decrease under this clause, but nothing in this clause precludes the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records that the Contracting Officer may reasonably require. Upon agreement of the parties, the Contracting Officer will modify the contract price or contract unit price in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.
- (f) Contract price adjustment computations shall be computed as follows:
- (1) *Computation for contract unit price per single craft hour for schedule of indefinite-quantity work.* For each labor classification, the difference between the actual wage and benefit rates (combined) paid and the wage and benefit rates (combined) required by the new wage determination shall be added to the original contract unit price if the difference results in a combined increase. If the difference computed results in a combined decrease, the contract unit price shall be decreased by that amount if the Contractor provides notification as provided in paragraph (e) of this clause.
  - (2) *Computation for contract unit price containing multiple craft hours for schedule of indefinite-quantity work.* For each labor classification, the difference between the actual wage and benefit rates (combined) paid and the wage and benefit rates (combined) required by the new wage determination shall be multiplied by the actual number of hours expended for each craft involved in accomplishing the unit-priced work item. The product of this computation will then be divided by the actual number of units ordered in the preceding contract period. The total of these computations for each craft will be added to the current contract unit price to obtain the new contract unit price. The extended amount for the contract line item will be obtained by multiplying the new unit price by the estimated quantity. If actual hours are not available from the preceding contract period for computation of the adjustment for a specific contract unit of work, the Contractor, in agreement with the Contracting Officer, shall estimate the total hours per craft per contract unit of work.

Example: Asphalt Paving—Current Price \$3.38 per Square Yard									
DBA Craft	New WD		Hourly rate paid		Diff.		Actual Hrs	Actual units (sq. yard)	Increase/sq yard
Equip. Opr.	\$18.50	–	\$18.00	=	\$.50	□	600 hrs./	3,000 sq. yrd.	= \$.10
Truck Driver	\$19.00	–	\$18.25	=	\$.75	□	525 hrs./	3,000 sq. yrd.	= \$.13
Laborer	\$11.50	–	\$11.25	=	\$.25	□	750 hrs./	3,000 sq. yrd.	= \$.06
Total increase per square yard =									\$ .29*
* Note: Adjustment for labor rate increases or decreases may be accompanied by social security and unemployment taxes and workers' compensation insurance.									
Current unit price	=	\$3.38	per square yard						
Add DBA price adj.		+ .29							



New unit price	\$3.67	per square yard		
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**52.222-41 Service Contract Act of 1965 (Nov 2007)**

(a) Definitions. As used in this clause—

*Act* means the Service Contract Act of 1965 (41 U.S.C. 351, et seq.). *Contractor* when this clause is used in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor." *Service employee* means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor.

(b) Applicability. This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in subpart C of 29 CFR Part 4.

(c) Compensation.

(1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(2) (i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv) (A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties

and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraphs (b)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) Adjustment of Compensation. If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under the contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) Obligation to Furnish Fringe Benefits. The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) Minimum Wage. In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) Successor Contracts. If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract. 53 Comp. Gen. 401 (1973). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) Notification to employees. The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) Safe and Sanitary Working Conditions. The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of the service employee. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) Records. (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act—

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

- (2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.
- (3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.
- (4) The Contractor will permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.
- (j) Pay Periods. The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semimonthly.
- (k) Withholding of Payments and Termination of Contract. The Contracting Officer shall withhold or cause to be withheld from the Government prime Contractor under this or any other Government contract with the prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may either enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.
- (l) Subcontracts. The Contractor agrees to insert this clause in all subcontracts subject to the Act.
- (m) Collective Bargaining Agreements Applicable to Service Employees. If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.
- (n) Seniority List. Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent prime Contractor shall furnish to the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.
- (o) Ruling and Interpretations. Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.
- (p) Contractor's Certification.
- (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.
  - (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.
  - (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- (q) Variations, Tolerances, and Exemptions Involving Employment. Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business.
- (1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).
  - (2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

- (3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.
- (r) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Office of Apprenticeship Training, Employer, and Labor Services (OATELS), U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.
- (s) Tips. An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision—
- (1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
  - (2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
  - (3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit;
  - (4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.
- (t) Disputes Concerning Labor Standards. The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### **52.223-5 Pollution Prevention and Right-To-Know Information (Aug 2003) (Alternate I -- Aug 2003)**

- (a) Definitions. As used in this clause—
- Priority chemical means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management. Toxic chemical means a chemical or chemical category listed in 40 CFR 372.65.
- (b) Executive Order 13148 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).
- (c) The Contractor shall provide all information needed by the Federal facility to comply with the following:
- (1) The emergency planning reporting requirements of section 302 of EPCRA.
  - (2) The emergency notice requirements of section 304 of EPCRA.
  - (3) The list of Material Safety Data Sheets, required by section 311 of EPCRA.
  - (4) The emergency and hazardous chemical inventory forms of section 312 of EPCRA.
  - (5) The toxic chemical release inventory of section 313 of EPCRA, which includes the reduction and recycling information required by section 6607 of PPA.
  - (6) The toxic chemical, priority chemical, and hazardous substance release and use reduction goals of sections 502 and 503 of Executive Order 13148.
  - (7) The environmental management system as described in section 401 of E.O. 13148.

#### **52.223-6 Drug-Free Workplace (May 2001)**

- (a) Definitions. As used in this clause—
- “Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.
- “Conviction” means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.
- “Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.
- “Drug-free workplace” means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.
- “Employee” means an employee of a Contractor directly engaged in the performance of work under a Government contract.
- “Directly engaged” is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.
- “Individual” means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall—within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration—

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment

#### **52.223-10 Waste Reduction Program (Aug 2000)**

(a) Definitions. As used in this clause—

(1) *Recycling* means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

(2) *Waste prevention* means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

(3) *Waste reduction* means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(b) Consistent with the requirements of Section 701 of Executive Order 13101, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.) and implementing regulations (40 CFR part 247).

#### **52.223-11 Ozone-Depleting Substances (May 2001)**

(a) Definition. "Ozone-depleting substance," as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as—

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

(b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 767i (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) \* \_\_\_\_\_, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

\* The Contractor shall insert the name of the substance(s).

**52.223-12 Refrigeration Equipment and Air Conditioners (May 1995)**

The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 767g and 767h) as each or both apply to this contract.

**52.223-13 Certification of Toxic Chemical Release Reporting. (Aug 2003)**

(a) Executive Order 13148, of April 21, 2000, Greening the Government through Leadership in Environmental Management, requires submission of this certification as a prerequisite for contract award.

(b) By signing this offer, the offeror certifies that—

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: [Check each block that is applicable.]

☐ (i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

☐ (ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

☐ (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

☐ (iv) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(A) Major group code 10 (except 1011, 1081, and 1094).

(B) Major group code 12 (except 1241).

(C) Major group codes 20 through 39.

(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

☐ (v) The facility is not located in the United States or its outlying areas..

**52.223-14 Toxic Chemical Release Reporting (Aug 2003)**

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor-owned or -operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if—

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(i) Major group code 10 (except 1011, 1081, and 1094).

(ii) Major group code 12 (except 1241).

(iii) Major group codes 20 through 39.

(iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.)), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(5) The facility is not located in the United States or its outlying areas.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt—

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall—

- (i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and
- (ii) Continue to file the annual Form R for the life of the contract for such facility.
- (d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.
- (e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall—
  - (1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and
  - (2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

#### **52.225-5 Trade Agreements (Nov 2007)**

(a) Definitions. As used in this clause.

Designated country means any of the following countries:

- (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);
- (2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);
- (3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or
- (4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago). Designated country end product means a WTO GPA country end product, an FTA country end product, a least developed country end product, or a Caribbean Basin country end product.

(1) Means an article that—

(i) (A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; And

(ii) Is not excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b).

(A) For this reason, the following articles are not Caribbean Basin country end products:

- (1) Tuna, prepared or preserved in any manner in airtight containers;
- (2) Petroleum, or any product derived from petroleum;
- (3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (i.e., Afghanistan, Cuba, Laos, North Korea, and Vietnam); and
- (4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or hand loomed, handmade, and folklore articles;

(B) Access to the HTSUS to determine duty-free status of articles of these types is available at <http://www.usitc.gov/tata/hts/>. In particular, see the following:

- (1) General Note 3(c), Products Eligible for Special Tariff treatment.
- (2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States—Caribbean Basin Trade Partnership Act of 2000.
- (3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).
- (4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States—Caribbean Basin Trade Partnership Act; and
- (2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself. Designated country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services, (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself. Free Trade Agreement country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself. Least developed country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself. WTO GPA country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services, (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself. End product means those articles, materials, and supplies to be acquired under the contract for public use. United States means the 50 States, the District of Columbia, and outlying areas. U.S.-made end product means an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

(b) Delivery of end products. The Contracting Officer has determined that the WTO GPA and FTAs apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only U.S.-made or designated country end products except to the extent that, in its offer, it specified delivery of other end products in the provision entitled "Trade Agreements Certificate."

(c) United States law will apply to resolve any claim of breach of this contract.

#### **52.225-9 Buy American Act—Construction Materials (Jan 2005)**

(a) Definitions. As used in this clause—

"Component" means an article, material, or supply incorporated directly into a construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Domestic construction material" means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

"Foreign construction material" means a construction material other than a domestic construction material.

"United States" means the 50 States, the District of Columbia, and outlying areas.

(b) Domestic preference.

(1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to the construction material or components listed by the Government as follows: *(none)*.

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that—



- (i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
  - (ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
  - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.
- (c) Request for determination of inapplicability of the Buy American Act.
- (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including—
    - (A) A description of the foreign and domestic construction materials;
    - (B) Unit of measure;
    - (C) Quantity;
    - (D) Price;
    - (E) Time of delivery or availability;
    - (F) Location of the construction project;
    - (G) Name and address of the proposed supplier; and
    - (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.
  - (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.
  - (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
  - (iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
- (2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.
- (3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.
- (d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
Item 2:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[\* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]

#### 52.225-10 Notice of Buy American Act Requirement—Construction Materials (May 2002)

(a) Definitions. “Construction material,” “domestic construction material,” and “foreign construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Buy American Act—Construction Materials” (Federal Acquisition Regulation (FAR) clause 52.225-9).

(b) Requests for determinations of inapplicability. An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-9 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers.

(1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction material, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(3)(i) of the clause at FAR 52.225-9.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) Alternate offers.

(1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-9, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225-9 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225-9 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

#### **52.225-11 Buy American Act—Construction Materials under Trade Agreements (Aug 2007)**

(a) Definitions. As used in this clause—

“Caribbean Basin country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Designated country” means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

“Foreign construction material” means a construction material other than a domestic construction material.

“Free Trade Agreement country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

“Least developed country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a least developed country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“WTO GPA country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials.

(1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows: (none)

[Contracting Officer to list applicable excepted materials or indicate “none”]

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act.

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

## Foreign and Domestic Construction Materials Price Comparison

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
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Item 1:

Foreign construction material	_____	_____	_____
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Domestic construction material	_____	_____	_____
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Item 2:

Foreign construction material	_____	_____	_____
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Domestic construction material	_____	_____	_____
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[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[\* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]

**52.225-12 Notice of Buy American Act Requirement—Construction Materials under Trade Agreements (Jan 2005)**

(a) Definitions. “Construction material,” “designated country construction material,” “domestic construction material,” and “foreign construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Buy American Act—Construction Materials Under Trade Agreements” (Federal Acquisition Regulation (FAR) clause 52.225-11).

(b) Requests for determination of inapplicability. An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers.

(1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225-11.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) Alternate offers.

(1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

**52.225-14 Inconsistency between English Version and Translation of Contract (Feb 2000)**

In the event of inconsistency between any terms of this contract and any translation into another language, the English language meaning shall control.

**52.227-1 Authorization and Consent (Dec 2007)**

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent—

(1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or

(2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a United States patent shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any

subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

#### **52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2007)**

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in the Contractor's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed the simplified acquisition threshold.

#### **52.227-4 Patent Indemnity—Construction Contracts (Dec 2007)**

Except as otherwise provided, the Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under (35 U.S.C. 181) arising out of performing this contract or out of the use or disposal by or for the account of the Government of supplies furnished or work performed under this contract.

#### **52.228-1 Bid Guarantee (Sept 1996)**

(a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

(b) The bidder shall furnish a bid guarantee in the form of a firm commitment, e.g., bid bond supported by good and sufficient surety or sureties acceptable to the Government, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds—

(1) To unsuccessful bidders as soon as practicable after the opening of bids; and

(2) To the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.

(c) The amount of the bid guarantee shall be (determined at the task order level) percent of the bid price or \$ determined at the task order level, whichever is less.

(d) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.

(e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

#### **52.228-2 Additional Bond Security (Oct 1997)**

The Contractor shall promptly furnish additional security required to protect the Government and persons supplying labor or materials under this contract if—

(a) Any surety upon any bond, or issuing financial institution for other security, furnished with this contract becomes unacceptable to the Government;

(b) Any surety fails to furnish reports on its financial condition as required by the Government;

(c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer; or

(d) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Contractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Contracting officer has the right to immediately draw on the ILC.

#### **52.228-11 Pledges of Assets (Feb 1992)**

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond—

(1) Pledge of assets; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of—

- (1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in FAR 28.203-2 (except see 28.203-2 (b)(2) with respect to Government securities held in book entry form) and/or;
- (2) A recorded lien on real estate. The offeror will be required to provide—
- (i) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203-3 (d);
  - (ii) Evidence of the amount due under any encumbrance shown in the evidence of title;
  - (iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

#### **52.228-12 Prospective Subcontractor Requests for Bonds (Oct 1995)**

In accordance with Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to the Miller Act, the Contractor shall promptly provide a copy of such payment bond to the requester.

#### **52.228-13 Alternative Payment Protections (Jul 2000)**

- (a) The Contractor shall submit one of the following payment protections:

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- (b) The amount of the payment protection shall be 100 percent of the contract price.
- (c) The submission of the payment protection is required within (determined at the task order level) days of contract award.
- (d) The payment protection shall provide protection for the full contract performance period plus a one-year period.
- (e) Except for escrow agreements and payment bonds, which provide their own protection procedures, the Contracting Officer is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that a nonpayment has occurred, and to withhold such funds pending resolution by administrative or judicial proceedings or mutual agreement of the parties.
- (f) When a tripartite escrow agreement is used, the Contractor shall utilize only suppliers of labor and material that signed the escrow agreement.

#### **52.228-14 Irrevocable Letter of Credit (Dec 1999)**

- (a) "Irrevocable letter of credit" (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Government (the beneficiary) of a written demand therefore. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.
- (b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.
- (c) The letter of credit shall be irrevocable, shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and—
  - (1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;
  - (2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Contracting Officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:
    - (i) For contracts subject to the Miller Act, the later of—
      - (A) One year following the expected date of final payment;
      - (B) For performance bonds only, until completion of any warranty period; or
      - (C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.
    - (ii) For contracts not subject to the Miller Act, the later of—
      - (A) 90 days following final payment; or
      - (B) For performance bonds only, until completion of any warranty period.

(d) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. The offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.

(e) The following format shall be used by the issuing financial institution to create an ILC:

\_\_\_\_\_  
[Issuing Financial Institution's Letterhead or Name and Address]

Issue Date \_\_\_\_\_

Irrevocable Letter of Credit No. \_\_\_\_\_

Account party's name \_\_\_\_\_

Account party's address \_\_\_\_\_

For Solicitation No. \_\_\_\_\_ (for reference only)

To: [U.S. Government agency]

[U.S. Government agency's address]

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States \$ \_\_\_\_\_. This Letter of Credit is payable at [issuing financial institution's and, if any, confirming financial institution's] office at [issuing financial institution's address and, if any, confirming financial institution's address] and expires with our close of business on \_\_\_\_\_, or any automatically extended expiration date.

2. We hereby undertake to honor your or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of the Government (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of \_\_\_\_\_ [state of confirming financial institution, if any, otherwise state of issuing financial institution].

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

\_\_\_\_\_  
[Issuing financial institution]

(f) The following format shall be used by the financial institution to confirm an ILC:

\_\_\_\_\_  
[Confirming Financial Institution's Letterhead or Name and Address]

(Date) \_\_\_\_\_

Our Letter of Credit Advice Number \_\_\_\_\_

Beneficiary: \_\_\_\_\_ [U.S. Government agency]

Issuing Financial Institution: \_\_\_\_\_

Issuing Financial Institution's LC No.: \_\_\_\_\_

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by \_\_\_\_\_ [name of issuing financial institution] for drawings of up to United States dollars \_\_\_\_\_/U.S. \$ \_\_\_\_\_ and expiring with our close of business on \_\_\_\_\_ [the expiration date], or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at \_\_\_\_\_.

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least 60 days prior to any such expiration date, we shall notify the Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce, Publication No. 500, and to the extent not inconsistent therewith, to the laws of \_\_\_\_\_ [state of confirming financial institution].

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

\_\_\_\_\_  
[Confirming financial institution]

(g) The following format shall be used by the Contracting Officer for a sight draft to draw on the Letter of Credit:  
Sight Draft

\_\_\_\_\_  
[City, State]

(Date) \_\_\_\_\_

\_\_\_\_\_  
[Name and address of financial institution]

Pay to the order of \_\_\_\_\_ [Beneficiary Agency] \_\_\_\_\_ the sum of United States \$ \_\_\_\_\_. This draft is drawn under Irrevocable Letter of Credit No. \_\_\_\_\_.

\_\_\_\_\_  
[Beneficiary Agency]

\_\_\_\_\_  
[By]

#### **52.228-15 Performance and Payment Bonds—Construction (Nov 2006)**

(a) Definitions. As used in this clause—

“Original contract price” means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) Amount of required bonds. Unless the resulting contract price is \$100,000 or less, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

(1) Performance bonds (Standard Form 25). The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) Payment Bonds (Standard Form 25A). The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) Additional bond protection.

(i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) Furnishing executed bonds. The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) Surety or other security for bonds. The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register or may be obtained from the:

U.S. Department of the Treasury  
Financial Management Service  
Surety Bond Branch  
3700 East West Highway, Room 6F01  
Hyattsville, MD 20782.

Or via the internet at <http://www.fms.treas.gov/c570/>.

(e) Notice of subcontractor waiver of protection (40 U.S.C. 3133(c)). Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

#### **52.229-3 Federal, State, and Local Taxes (Apr 2003) (Deviation – Feb 2007)**

(a) As used in this clause— “After-imposed Federal tax” means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period,



on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes. "After-relieved Federal tax" means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date. "All applicable Federal, State, and local taxes and duties" means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract. "Contract date" means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification. "Local taxes" includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The ordering activity shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

#### **52.232-5 Payments under Fixed-Price Construction Contracts (Sept 2002)**

(a) Payment of price. The Government shall pay the Contractor the contract price as provided in this contract.

(b) Progress payments. The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

(1) The Contractor's request for progress payments shall include the following substantiation:

(i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.

(ii) A listing of the amount included for work performed by each subcontractor under the contract.

(iii) A listing of the total amount of each subcontract under the contract.

(iv) A listing of the amounts previously paid to each such subcontractor under the contract.

(v) Additional supporting data in a form and detail required by the Contracting Officer.

(2) In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if—

(i) Consideration is specifically authorized by this contract; and

(ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) Contractor certification. Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)

I hereby certify, to the best of my knowledge and belief, that—

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of Chapter 39 of Title 31, United States Code;

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4) This certification is not to be construed as final acceptance of a subcontractor's performance.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

(d) Refund of unearned amounts. If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the “unearned amount”), the Contractor shall—

(1) Notify the Contracting Officer of such performance deficiency; and  
 (2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until—

(i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or  
 (ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) Retainage. If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(f) Title, liability, and reservation of rights. All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as—

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(g) Reimbursement for bond premiums. In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

(h) Final payment. The Government shall pay the amount due the Contractor under this contract after—

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor’s claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

(i) Limitation because of undefinitized work. Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A “contract action” is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(j) Interest computation on unearned amounts. In accordance with 31 U.S.C 3903 (c)(1), the amount payable under paragraph (d)(2) of this clause shall be—

(1) Computed at the rate of average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Contractor receives the unearned amount; and

(2) Deducted from the next available payment to the Contractor.

#### **52.232-17 Interest (Jun 1996) Deviation I – May 2003**

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the ordering activity under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the ordering activity transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

**52.232-27 Prompt Payment for Construction Contracts (Sept 2005)**

Notwithstanding any other payment terms in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in sections 2.101, 32.001 and 32.905 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments—

(1) Types of invoice payments. For purposes of this clause, there are several types of invoice payments that may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project.

(A) The due date for making such payments is 14 days after the designated billing office receives a proper payment request. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date is the 14th day after the date of the Contractor's payment request, provided the designated billing office receives a proper payment request and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, is as specified in the contract or, if not specified, 30 days after approval by the Contracting Officer for release to the Contractor.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract).

(A) The due date for making such payments is the later of the following two events:

(1) The 30th day after the designated billing office receives a proper invoice from the Contractor.

(2) The 30th day after Government acceptance of the work or services completed by the Contractor. For a final invoice when the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance is deemed to occur on the effective date of the contract settlement.

(B) If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(2)(i) through (a)(2)(xi) of this clause. If the invoice does not comply with these requirements, the designated billing office must return it within 7 days after receipt, with the reasons why it is not a proper invoice. When computing any interest penalty owed the Contractor, the Government will take into account if the Government notifies the Contractor of an improper invoice in an untimely manner.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., discount for prompt payment terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) For payments described in paragraph (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(xi) Any other information or documentation required by the contract.

(3) Interest penalty. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

- (i) The designated billing office received a proper invoice.
- (ii) The Government processed a receiving report or other Government documentation authorizing payment and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.
- (iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.
- (4) Computing penalty amount. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR Part 1315.
- (i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in paragraph (a)(1)(ii) of this clause, Government acceptance or approval is deemed to occur constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. If actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.
- (ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes, and any interest that may be payable in accordance with the clause at FAR 52.233-1, Disputes.
- (5) Discounts for prompt payment. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR Part 1315.
- (6) Additional interest penalty.
- (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR Part 1315 in addition to the interest penalty amount only if—
  - (A) The Government owes an interest penalty of \$1 or more;
  - (B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and
  - (C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.
- (ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall—
  - (1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;
  - (2) Attach a copy of the invoice on which the unpaid late payment interest was due; and
  - (3) State that payment of the principal has been received, including the date of receipt.
- (B) If there is no postmark or the postmark is illegible—
  - (1) The designated payment office that receives the demand will annotate it with the date of receipt provided the demand is received on or before the 40th day after payment was made; or
  - (2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.
- (b) Contract financing payments. If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.
- (c) Subcontract clause requirements. The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:
  - (1) Prompt payment for subcontractors. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.
  - (2) Interest for subcontractors. An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause—
    - (i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and
    - (ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.
  - (3) Subcontractor clause flow-down. A clause requiring each subcontractor to—
    - (i) Include a payment clause and an interest penalty clause conforming to the standards set forth in paragraphs (c)(1) and (c)(2) of this clause in each of its subcontracts; and
    - (ii) Require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.
- (d) Subcontract clause interpretation. The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that—

- (1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;
- (2) Withholding permitted. Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and
- (3) Withholding requirements. Permit such withholding without incurring any obligation to pay a late payment penalty if—
- (i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and
  - (ii) The Contractor furnishes to the Contracting Officer a copy of any notice issued by a Contractor pursuant to paragraph (d)(3)(i) of this clause.
- (e) Subcontractor withholding procedures. If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall—
- (1) Subcontractor notice. Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;
  - (2) Contracting Officer notice. Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to paragraph (e)(1) of this clause;
  - (3) Subcontractor progress payment reduction. Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (e)(1) of this clause;
  - (4) Subsequent subcontractor payment. Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and—
    - (i) Make such payment within—
      - (A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefore must be recovered from the Government because of a reduction under paragraph (e)(5)(i)) of this clause; or
      - (B) Seven days after the Contractor recovers such funds from the Government; or
    - (ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;
  - (5) Notice to Contracting Officer. Notify the Contracting Officer upon—
    - (i) Reduction of the amount of any subsequent certified application for payment; or
    - (ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying—
      - (A) The amounts withheld under paragraph (e)(1) of this clause; and
      - (B) The dates that such withholding began and ended; and
  - (6) Interest to Government. Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until—
    - (i) The day the identified subcontractor performance deficiency is corrected; or
    - (ii) The date that any subsequent payment is reduced under paragraph (e)(5)(i) of this clause.
  - (f) Third-party deficiency reports—
    - (1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with the Miller Act (40 U.S.C. 3133), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under paragraph (e)(6) of this clause—
      - (i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and
      - (ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (f)(1)(i) of this clause.
    - (2) Subsequent payment or interest charge. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall—
      - (i) Pay the amount withheld under paragraph (f)(1)(ii) of this clause to such first-tier subcontractor; or
      - (ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.
    - (g) Written notice of subcontractor withholding. The Contractor shall issue a written notice of any withholding to a subcontractor (with a copy furnished to the Contracting Officer), specifying—
      - (1) The amount to be withheld;
      - (2) The specific causes for the withholding under the terms of the subcontract; and
      - (3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

- (h) Subcontractor payment entitlement. The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.
- (i) Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the Government is a party. The Government may not be interpleaded in any judicial or administrative proceeding involving such a dispute.
- (j) Preservation of prime-subcontractor rights. Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.
- (k) Non-recourse for prime contractor interest penalty. The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the Government for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.
- (l) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

**52.232-34 Payment by Electronic Funds Transfer—Other than Central Contractor Registration  
(May 1999) (Deviation – Feb 2007)**

- (a) Method of payment.
- (1) All payments by the ordering activity under this contract shall be made by electronic funds transfer (EFT) except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.
  - (2) In the event the ordering activity is unable to release one or more payments by EFT, the Contractor agrees to either—
    - (i) Accept payment by check or some other mutually agreeable method of payment; or
    - (ii) Request the ordering activity to extend payment due dates until such time as the ordering activity makes payment by EFT (but see paragraph (d) of this clause).
- (b) Mandatory submission of Contractor's EFT information.
- (1) The Contractor is required to provide the ordering activity with the information required to make payment by EFT (see paragraph (j) of this clause). The Contractor shall provide this information directly to the office designated in this contract to receive that information (hereafter: "designated office") by to be determined at the task order level. If not otherwise specified in this contract, the payment office is the designated office for receipt of the Contractor's EFT information. If more than one designated office is named for the contract, the Contractor shall provide a separate notice to each office. In the event that the EFT information changes the Contractor shall be responsible for providing the updated information to the designated office(s).
  - (2) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to the designated office. However, EFT information supplied to a designated office shall be applicable only to contracts that identify that designated office as the office to receive EFT information for that contract.
- (c) Mechanisms for EFT payment. The ordering activity may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR Part 210.
- (d) Suspension of payment.
- (1) The ordering activity is not required to make any payment under this contract until after receipt, by the designated office, of the correct EFT payment information from the Contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.
  - (2) If the EFT information changes after submission of correct EFT information, the ordering activity shall begin using the changed EFT information no later than 30 days after its receipt by the designated office to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the updated EFT information is implemented by the payment office. If such suspension would result in a late payment under the prompt payment terms of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.
- (e) Liability for uncompleted or erroneous transfers.
- (1) If an uncompleted or erroneous transfer occurs because the ordering activity used the Contractor's EFT information incorrectly, the ordering activity remains responsible for—
    - (i) Making a correct payment;
    - (ii) Paying any prompt payment penalty due; and
    - (iii) Recovering any erroneously directed funds.

- (2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of ordering activity release of the EFT payment transaction instruction to the Federal Reserve System, and—
- (i) If the funds are no longer under the control of the payment office, the ordering activity is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
  - (ii) If the funds remain under the control of the payment office, the ordering activity shall not make payment and the provisions of paragraph (d) shall apply.
- (f) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.
- (g) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (j) of this clause to the designated office, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the ordering activity, is incorrect EFT information within the meaning of paragraph (d) of this clause.
- (h) Liability for change of EFT information by financial agent. The ordering activity is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.
- (i) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The ordering activity may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the ordering activity does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the ordering activity. If the ordering activity makes payment by check in accordance with paragraph (a) of this clause, the ordering activity shall mail the payment information to the remittance address in the contract.
- (j) EFT information. The Contractor shall provide the following information to the designated office. The Contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause). The Contractor shall designate a single financial agent per contract capable of receiving and processing the EFT information using the EFT methods described in paragraph (c) of this clause.
- (1) The contract number (or other procurement identification number).
  - (2) The Contractor's name and remittance address, as stated in the contract(s).
  - (3) The signature (manual or electronic, as appropriate), title, and telephone number of the Contractor official authorized to provide this information.
  - (4) The name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.
  - (5) The Contractor's account number and the type of account (checking, saving, or lockbox).
  - (6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the Contractor's financial agent.
  - (7) If applicable, the Contractor shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the Contractor's financial agent is not directly on-line to the Fedwire Transfer System; and, therefore, not the receiver of the wire transfer payment.

#### **52.232-36 Payment by a Third Party (May 1999) (Deviation–May 2003)**

- (a) General. The Contractor agrees to accept payments due under this contract, through payment by a third party in lieu of payment directly from the ordering activity, in accordance with the terms of this clause. The third party and, if applicable, the particular credit card to be used are identified elsewhere in this contract.
- (b) Contractor payment request. In accordance with those clauses of this contract that authorize the Contractor to submit invoices, contract financing requests, other payment requests, or as provided in other clauses providing for payment to the Contractor, the Contractor shall make such payment requests through a charge to the ordering activity account with the third party, at the time and for the amount due in accordance with the terms of this contract.
- (c) Payment. The Contractor and the third party shall agree that payments due under this contract shall be made upon submittal of payment requests to the third party in accordance with the terms and conditions of an agreement between the Contractor, the Contractor's financial agent (if any), and the third party and its agents (if any). No payment shall be due the Contractor until such agreement is made. Payments made or due by the third party under this clause are not payments made by the ordering activity and are not subject to the Prompt Payment Act or any implementation thereof in this contract.
- (d) Documentation. Documentation of each charge against the ordering activities' account shall be provided to the Contracting Officer upon request.
- (e) Assignment of claims. Notwithstanding any other provision of this contract, if any payment is made under this clause, then no payment under this contract shall be assigned under the provisions of the assignment of claims terms of this contract or the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15.
- (f) Other payment terms. The other payment terms of this contract shall govern the content and submission of payment requests. If any clause requires information or documents in or with the payment request that is not provided in the third party

agreement referenced in paragraph (c) of this clause, the Contractor shall obtain instructions from the Contracting Officer before submitting such a payment request.

#### **52.233-1 Disputes (July 2002)**

- (a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).
- (b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.
- (c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.
- (2)(i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.
- (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
- (iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."
- (3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.
- (e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- (f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.
- (g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.
- (h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
- (i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

#### **52.233-2 Service of Protest (Sept 2006)**

- (a) Protests, as defined in section 31.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from \_\_\_\_\_. [Contracting Officer designate the official or location where a protest may be served on the Contracting Officer.]
- (b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

#### **52.233-3 Protest after Award (Aug 1996)**

- (a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102 (d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either—
- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- (b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—



- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- (2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.
- (f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102 (b)(2) or 33.104 (h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

#### **52.236-2 Differing Site Conditions (Apr 1984)**

- (a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of—
  - (1) Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract; or
  - (2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.
- (b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.
- (c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in paragraph (a) of this clause for giving written notice may be extended by the Contracting Officer.
- (d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

#### **52.236-3 Site Investigation and Conditions Affecting the Work (Apr 1984)**

- (a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.
- (b) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

#### **52.236-5 Material and Workmanship (Apr 1984)**

- (a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.
- (b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer, the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor

shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

#### **52.236-6 Superintendence by the Contractor (Apr 1984)**

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the worksite a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

#### **52.236-7 Permits and Responsibilities (Nov 1991)**

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

#### **52.236-8 Other Contracts (Apr 1984)**

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

#### **52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements (Apr 1984)**

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site, and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

#### **52.236-10 Operations and Storage Areas (Apr 1984)**

(a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the

manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

**52.236-11 Use and Possession Prior to Completion (Apr 1984)**

(a) The Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Government's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

**52.236-12 Cleaning Up (Apr 1984)**

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

**52.236-13 Accident Prevention (Nov 1991)**

(a) The Contractor shall provide and maintain work environments and procedures which will—

(1) Safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;

(2) Avoid interruptions of Government operations and delays in project completion dates; and

(3) Control costs in the performance of this contract.

(b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall—

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

(d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

**52.236-14 Availability and Use of Utility Services (Apr 1984)**

(a) The Government shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Government, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

**52.236-15 Schedules for Construction Contracts (Apr 1984)**

- (a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.
- (b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.
- (c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

#### **52.236-17 Layout of Work (Apr 1984)**

The Contractor shall lay out its work from Government established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

#### **52.236-26 Preconstruction Conference (Feb 1995)**

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

#### **52.236-28 Preparation of Proposals—Construction (Oct 1997)**

- (a) Proposals must be (1) submitted on the forms furnished by the Government or on copies of those forms; and (2) manually signed. The person signing a proposal must initial each erasure or change appearing on any proposal form.
- (b) The proposal form may require offerors to submit proposed prices for one or more items on various bases, including—
- (1) Lump sum price;
  - (2) Alternate prices;
  - (3) Units of construction; or
  - (4) Any combination of paragraphs (b)(1) through (b)(3) of this provision.
- (c) If the solicitation requires submission of a proposal on all items, failure to do so may result in the proposal being rejected without further consideration. If a proposal on all items is not required, offerors should insert the words "no proposal" in the space provided for any item on which no price is submitted.
- (d) Alternate proposals will not be considered unless this solicitation authorizes their submission.

#### **52.237-1 Site Visit (Apr 1984)**

Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

#### **52.237-2 Protection of Government Buildings, Equipment, and Vegetation (APR 1984)**

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

**52.237-3 Continuity of Services (Jan 1991) (Deviation – May 2003)**

- (a) The Contractor recognizes that the services under this contract are vital to the ordering activity and must be continued without interruption and that, upon contract expiration, a successor, either the ordering activity or another contractor, may continue them. The Contractor agrees to-
- (1) Furnish phase-in training; and
  - (2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- (b) The Contractor shall, upon the Contracting Officer's written notice,
- (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and
  - (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.
- (c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- (d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

**52.242-14 Suspension of Work (Apr 1984)**

- (a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted
- (1) by an act of the Contracting Officer in the administration of this contract, or
  - (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.
- (c) A claim under this clause shall not be allowed—
- (1) For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and
  - (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

**52.242-15 Stop Work Order (Aug 1989)**

The "90-day" period stated in the clause may be reduced to less than 90 days.

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either—
- (1) Cancel the stop-work order; or
  - (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—
- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
  - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the

convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

#### **52.243-4 Changes (Jun 2007)**

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes—

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the Government-furnished property or services; or
- (4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause;

Provided, that the Contractor gives the Contracting Officer written notice stating—

- (1) The date, circumstances, and source of the order; and
- (2) That the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) of this clause.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

#### **52.243-6 Change Order Accounting (Apr 1984)**

The Contracting Officer may require change order accounting whenever the estimated cost of a change or series of related changes exceeds \$100,000. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the Contracting Officer or the matter is conclusively disposed of in accordance with the Disputes clause.

#### **52.244-2 Subcontracts (Jun 2007)**

(a) Definitions. As used in this clause—

“Approved purchasing system” means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

“Consent to subcontract” means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

“Subcontract” means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

(c) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that—

- (1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or
- (2) Is fixed-price and exceeds—

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:

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- (e)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:
- (i) A description of the supplies or services to be subcontracted.
  - (ii) Identification of the type of subcontract to be used.
  - (iii) Identification of the proposed subcontractor.
  - (iv) The proposed subcontract price.
  - (v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
  - (vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.
  - (vii) A negotiation memorandum reflecting—
    - (A) The principal elements of the subcontract price negotiations;
    - (B) The most significant considerations controlling establishment of initial or revised prices;
    - (C) The reason cost or pricing data were or were not required;
    - (D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
    - (E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
    - (F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
    - (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (b), (c), or (d) of this clause.
- (f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination—
- (1) Of the acceptability of any subcontract terms or conditions;
  - (2) Of the allowability of any cost under this contract; or
  - (3) To relieve the Contractor of any responsibility for performing this contract.
- (g) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4 (c)(4)(i).
- (h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.
- (i) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.
- (j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:
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#### **52.244-6 Subcontracts for Commercial Items (Mar 2007)**

(a) Definitions. As used in this clause—

“Commercial item” has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637 (d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212(a));

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201). Flow down as required in accordance with paragraph (g) of FAR clause 52.222-39).

(vi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

#### **52.246-4 Inspection of Services – Fixed Price (Aug 1996) (Deviation May 2003)**

(a) Definition: "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the ordering activity covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the ordering activity during contract performance and for as long afterwards as the contract requires.

(c) The ordering activity has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The ordering activity shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the ordering activity performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform with contract requirements, the ordering activity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the ordering activity may—

(1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and

(2) Reduce the contract price to reflect the reduced value of the services performed.

(f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the ordering activity may--

(1) By contract or otherwise, perform the services and charge to the Contractor any cost incurred by the ordering activity that is directly related to the performance of such service; or

(2) Terminate the contract for default.

#### **52.246-12 Inspection of Construction (Aug 1996)**

(a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) Government inspections and tests are for the sole benefit of the Government and do not—

(1) Relieve the Contractor of responsibility for providing adequate quality control measures;

(2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;

(3) Constitute or imply acceptance; or

(4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) of this section.

(d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.

(e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(g) If the Contractor does not promptly replace or correct rejected work, the Government may—

(1) By contract or otherwise, replace or correct the work and charge the cost to the Contractor; or

(2) Terminate for default the Contractor's right to proceed.



(h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

#### **52.247-38 F.o.b. Inland Carrier, Point of Exportation (Feb 2006) (Deviation – Feb 2007)**

(a) The term "f.o.b. inland carrier, point of exportation," as used in this clause, means free of expense to the ordering activity, on board the conveyance of the inland carrier, delivered to the specified point of exportation.

(b) The Contractor shall—

- (1) (i) Pack and mark the shipment to comply with contract specifications; or
  - (ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;
- (2) Prepare and distribute commercial bills of lading or other transportation receipt;
- (3) (i) Deliver the shipment in good order and condition in or on the conveyance of the carrier on the date or within the period specified; and
  - (ii) Pay and bear all applicable charges, including transportation costs, to the point of delivery specified in the contract;
- (4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point of delivery in the contract; and
- (5) At the ordering activity's request and expense, assist in obtaining the documents required for—
  - (i) Exportation; or
  - (ii) Importation at destination.

#### **52.247-63 Preference for U.S.-Flag Air Carriers (June 2003)**

(a) Definitions. As used in this clause—

"International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States" means the 50 States, the District of Columbia, and outlying areas.

"U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): [State reasons]:

(End of statement)

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

#### **52.246-21 Warranty of Construction (Mar 1994)**

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of—

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall—

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

#### **52.247-38 F.o.b. Inland Carrier, Point of Exportation (Feb 2006) (Deviation – Feb 2007)**

(a) The term "f.o.b. inland carrier, point of exportation," as used in this clause, means free of expense to the ordering activity, on board the conveyance of the inland carrier, delivered to the specified point of exportation.

(b) The Contractor shall—

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) Prepare and distribute commercial bills of lading or other transportation receipt;

(3) (i) Deliver the shipment in good order and condition in or on the conveyance of the carrier on the date or within the period specified; and

(ii) Pay and bear all applicable charges, including transportation costs, to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point of delivery in the contract; and

(5) At the ordering activity's request and expense, assist in obtaining the documents required for—

(i) Exportation; or

(ii) Importation at destination.

#### **52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006)**

(a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. Appx 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are—

(1) Acquired for a U.S. Government agency account;

(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;

(3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

(4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c) (1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer and (ii) the Office of Cargo Preference, Maritime Administration (MAR-590), 400 Seventh Street, SW, Washington, DC 20590. Subcontractor bills of lading shall be submitted through the Prime Contractor.

- (2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:
- (A) Sponsoring U.S. Government agency.
  - (B) Name of vessel.
  - (C) Vessel flag of registry.
  - (D) Date of loading.
  - (E) Port of loading.
  - (F) Port of final discharge.
  - (G) Description of commodity.
  - (H) Gross weight in pounds and cubic feet if available.
  - (I) Total ocean freight revenue in U.S. dollars.
- (d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract, except those described in paragraph (e)(4).
- (e) The requirement in paragraph (a) does not apply to—
- (1) Cargoes carried in vessels as required or authorized by law or treaty;
  - (2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);
  - (3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and
  - (4) Subcontracts or purchase orders for the acquisition of commercial items unless—(g) This contract is—i. A contract or agreement for ocean transportation services; or ii. A construction contract; or (h) The supplies being transported are—i. Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or ii. Shipped in direct support of U.S. military—1. Contingency operations; 2. Exercises; or 3. Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.
- (f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Office of Costs and Rates, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590, Phone: 202-366-4610.

### **52.248-3 Value Engineering—Construction (Sept 2006)**

- (a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP's, in accordance with paragraph (f) of this clause.
- (b) Definitions. "Collateral costs," as used in this clause, means agency costs of operation, maintenance, logistic support, or Government-furnished property.
- "Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.
- "Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.
- "Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.
- "Instant contract savings," as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractors' development and implementation costs (see paragraph (h) of this clause).
- "Value engineering change proposal (VECP)" means a proposal that—
- (1) Requires a change to this, the instant contract, to implement; and
  - (2) Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; provided, that it does not involve a change—
- (i) In deliverable end item quantities only; or
  - (ii) To the contract type only.
- (c) VECP preparation. As a minimum, the Contractor shall include in each VECP the information described in paragraphs (c)(1) through (7) of this clause. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:
- (1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.
  - (2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.
  - (3) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) of this clause.

(4) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(5) A prediction of any effects the proposed change would have on collateral costs to the agency.

(6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(7) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) Submission. The Contractor shall submit VECP's to the Resident Engineer at the worksite, with a copy to the Contracting Officer.

(e) Government action.

(1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it will not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) Sharing—

(1) Rates. The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by—

(i) 45 percent for fixed-price contracts; or

(ii) 75 percent for cost-reimbursement contracts.

(2) Payment. Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to—

(i) Accept the VECP;

(ii) Reduce the contract price or estimated cost by the amount of instant contract savings; and

(iii) Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.

(g) Collateral savings. If a VECP is accepted, the Contracting Officer will increase the instant contract amount by 20 percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer is the sole determiner of the amount of collateral savings.

(h) Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of \$55,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under paragraph (f) of this clause, the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by the Government under this contract, but shall exclude any value engineering incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that these payments shall not reduce the Government's share of the savings resulting from the VECP.

(i) Data. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

These data, furnished under the Value Engineering—Construction clause of contract \_\_\_\_\_, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations.

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

#### **52.249-2 Termination for Convenience of the Government (Fixed-Price)) (May 2004)**

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
- (6) As directed by the Contracting Officer, transfer title and deliver to the Government—
  - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
  - (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.
- (d) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- (f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:
  - (1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under paragraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.
  - (2) The total of—
    - (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under paragraph (g)(1) of this clause;
    - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and
    - (iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (g)(2)(iii) and shall reduce the settlement to reflect the indicated rate of loss.
  - (3) The reasonable costs of settlement of the work terminated, including—
    - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
    - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

- (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.
- (i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
- (j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.
- (k) In arriving at the amount due the Contractor under this clause, there shall be deducted—
  - (1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;
  - (2) Any claim which the Government has against the Contractor under this contract; and
  - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.
- (l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.
- (m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.
- (n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

#### **52.249-10 Default (Fixed-Price - Construction) (Apr 1984)**

- (a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.
- (b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if—
  - (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include—
    - (i) Acts of God or of the public enemy,
    - (ii) Acts of the Government in either its sovereign or contractual capacity,
    - (iii) Acts of another Contractor in the performance of a contract with the Government,
    - (iv) Fires,
    - (v) Floods,
    - (vi) Epidemics,
    - (vii) Quarantine restrictions,
    - (viii) Strikes,
    - (ix) Freight embargoes,
    - (x) Unusually severe weather, or
    - (xi) Delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and
  - (2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall

be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

(d) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

#### **552.211-71 Standard References (Sep 1999)**

(a) All documents and publications (such as, but not limited to, manuals, handbooks, codes, standards and specifications) cited in this contract for the purpose of establishing requirements applicable to equipment, materials, or workmanship under this contract, shall be deemed to be incorporated herein as fully as if printed and bound with the specifications of this contract, in accordance with the following:

(1) Wherever reference is made to Standard Specifications of the Public Buildings Service, Interim Federal Specifications, Interim Amendments to Federal Specifications, Interim Federal Standards, or Interim Amendments to Federal Standards, the Contractor shall comply with the requirements set out in the issue or edition identified in this contract.

(2) Wherever reference is made to any such document other than those specified in paragraph (1) of this subsection, the Contractor shall comply with the requirements set out in the edition specified in this contract, or if not specified, the latest edition or revision thereof, as well as the latest amendment or supplement thereto, in effect on the date of the solicitation on this project, except as modified by, as otherwise provided in, or as limited to type, class or grade, by the specifications of this contract.

(b) Upon request the Contractor shall make available at the job site within a reasonable time, a copy of each trade manual and standard which is incorporated by reference in this contract and which governs quality and workmanship

#### **552.211-75 Preservation, Packaging and Packing.(Feb 1996) ( Alternate I – May 2003)**

Unless otherwise specified, all items shall be preserved, packaged, and packed in accordance with normal commercial practices, as defined in the applicable commodity specification. Packaging and packing shall comply with the requirements of the Uniform Freight Classification and the National Motor Freight Classification (issue in effect at time of shipment) and each shipping container of each item in a shipment shall be of uniform size and content, except for residual quantities. Where special or unusual packing is specified in an order, but not specifically provided for by the contract, such packing details must be the subject of an agreement independently arrived at between the ordering activity and the Contractor.

#### **552.211-77 Packing List. (Feb 1996) (Alternate I – May 2003)**

(a) A packing list or other suitable shipping document shall accompany each shipment and shall indicate:

- (1) Name and address of the consignor;
- (2) Name and complete address of the consignee;
- (3) Government order or requisition number;
- (4) Government bill of lading number covering the shipment (if any); and
- (5) Description of the material shipped, including item number, quantity, number of containers, and package number (if any).

(b) When payment will be made by Ordering activity commercial credit card, in addition to the information in (a) above, the packing list or shipping document shall include:

- (1) Cardholder name and telephone number; and
- (2) The term "Credit Card."

#### **552.211-82 Notice of Shipment (Feb 1996)**

If specified in an order placed under this contract, the Contractor shall, at the time each shipment is made on such order, furnish a notice of shipment to either the consignee or the ordering office or both, as specified.

This requirement may be satisfied by completion and return of appropriate forms furnished by the ordering office or by the furnishing of copies of bills of lading, freight bills, or similar documents in accordance with normal commercial practice if such document clearly identifies the order number, items and quantities shipped, date of shipment, point of origin, method of shipment and routing, and the name of initial carrier.

#### **552.211-84 Non-Compliance with Contract Requirements (Feb 1996)**

In the event the Contractor, after receiving written notice from the Contracting Officer of non-compliance with any requirement of this contract, fails to initiate promptly such action as may be appropriate to comply with the specified requirement within a reasonable period of time, the Contracting Officer shall have the right to order the Contractor to stop any or all work under the contract until the Contractor has complied or has initiated such action as may be appropriate to comply within a reasonable period of time. The Contractor will not be entitled to any extension of contract time or payment for any costs incurred as a result of being ordered to stop work for such cause.

**552.215-70 Examination of Records by GSA (Feb 1996)**

The Contractor agrees that the Administrator of General Services or any duly authorized representatives shall, until the expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to this contract or compliance with any clauses thereunder. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Administrator of General Services or any authorized representatives shall, until the expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Subpart 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of such subcontractor involving transactions related to the subcontract or compliance with any clauses thereunder. The term "subcontract" as used in this clause excludes (a) purchase orders not exceeding \$100,000 and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

**552.216-72 Placement of orders (SEP 1999) (Alternate IV -- FEB 2007)**

- (a) See 552.238-78, Scope of Contract (Eligible Ordering Activities)--Alternate I, for who may order under this contract.
- (b) Orders may be placed through Electronic Data Interchange (EDI) or mailed in paper form. EDI orders shall be placed using the American National Standards Institute (ANSI) X12 Standard for Electronic Data Interchange (EDI) format.
- (c) If the Contractor agrees, GSA's Federal Acquisition Service (FAS) will place orders for eligible ordering activities, as defined in paragraph (a) of the clause at 552.238-78-Alternate I, by EDI using computer-to-computer EDI. If computer-to-computer EDI is not possible, FAS will use an alternative EDI method allowing the Contractor to receive orders by facsimile transmission. Subject to the Contractor's agreement, other eligible ordering activities, as defined in paragraphs (a) and (d) of the clause at 552.238-78-Alternate I, may also place orders by EDI.
- (d) When computer-to-computer EDI procedures will be used to place orders, the Contractor shall enter into one or more Trading Partner Agreements (TPA) with each ordering activity placing orders electronically in order to ensure mutual understanding by the parties of certain electronic transaction conventions and to recognize the rights and responsibilities of the parties as they apply to this method of placing orders. The TPA must identify, among other things, the third party provider(s) through which electronic orders are placed, the transaction sets used, security procedures, and guidelines for implementation. Ordering activities may obtain a sample format to customize as needed from the office specified in paragraph (g) of this clause.
- (e) The Contractor shall be responsible for providing its own hardware and software necessary to transmit and receive data electronically. Additionally, each party to the TPA shall be responsible for the costs associated with its use of third party provider services.
- (f) Nothing in the TPA will invalidate any part of this contract between the Contractor and the General Services Administration. All terms and conditions of this contract that otherwise would be applicable to a mailed order shall apply to the electronic order.
- (g) The basic content and format of the TPA will be provided by:
  - General Services Administration
  - Acquisition Operations and Electronic Commerce Center (FCS)
  - Washington, DC 20406
  - Telephone: (703) 305-7741
  - FAX: (703) 305-7720

**552.232-8 Discounts for Prompt Payment (Apr 1989) (Deviation FAR 52.232-8) (Alternate I — May 2003)**

- (a) Discounts for early payment (hereinafter referred to as "discounts" or "the discount") will be considered in evaluating the relationship of the offeror's concessions to the Government vis-a-vis the offeror's concessions to its commercial customers, but only to the extent indicated in this clause.
- (b) Discounts will not be considered to determine the low offeror in the situation described in the "Offers on Identical Products" provision of this solicitation.
- (c) Uneconomical discounts will not be considered as meeting the criteria for award established by the Government. In this connection, a discount will be considered uneconomical if the annualized rate of return for earning the discount is lower than the "value of funds" rate established by the Department of the Treasury and published quarterly in the Federal Register. The "value of funds" rate applied will be the rate in effect on the date specified for the receipt of offers.
- (d) Discounts for early payment may be offered either in the original offer or on individual invoices submitted under the resulting contract. Discounts offered will be taken by the Government if payment is made within the discount period specified.
- (e) Discounts that are included in offers become a part of the resulting contracts and are binding on the Contractor for all orders placed under the contract. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.
- (f) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.



**552.232-79 Payment by Credit Card (May 2003)****(a) Definitions.**

“Credit card” means any credit card used to pay for purchases, including the Governmentwide Commercial Purchase Card.

“Governmentwide commercial purchase card” means a uniquely numbered credit card issued by a contractor under GSA's Governmentwide Contract for Fleet, Travel, and Purchase Card Services to named individual Government employees or entities to pay for official Government purchases.

“Oral order” means an order placed orally either in person or by telephone.

(b) The Contractor must accept the credit card for payments equal to or less than the micro-purchase threshold (see Federal Acquisition Regulation 2.101) for oral or written orders under this contract.

(c) The Contractor and the ordering agency may agree to use the credit card for dollar amounts over the micro-purchase threshold, and the Government encourages the Contractor to accept payment by the purchase card. The dollar value of a purchase card action must not exceed the ordering agency's established limit. If the Contractor will not accept payment by the purchase card for an order exceeding the micro-purchase threshold, the Contractor must so advise the ordering agency within 24 hours of receipt of the order.

(d) The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased supplies have been shipped or services performed.

Unless the cardholder requests correction or replacement of a defective or faulty item under other contract requirements, the Contractor must immediately credit a cardholder's account for items returned as defective or faulty.

(e) Payments made using the Governmentwide commercial purchase card are not eligible for any negotiated prompt payment discount. Payment made using an ordering activity debit card will receive the applicable prompt payment discount.

**552.232-81 Payments by Non Federal Ordering Activities (May 2003)**

If eligible non-federal ordering activities are subject to a State prompt payment law, the terms and conditions of the applicable State law apply to the orders placed under this contract by such activities. If eligible non-federal ordering activities are not subject to a State prompt payment law, the terms and conditions of the Federal Prompt Payment Act as reflected in Federal Acquisition Regulation clause 52.232-25, Prompt Payment, or 52.212-4, Contract Terms and Conditions—Commercial Items, apply to such activities in the same manner as to Federal ordering activities.

**552.236-70 Definitions (Apr 1984)**

The terms “Administration” and “Service” as used in this contract shall mean the General Services Administration (GSA) and the Public Buildings Service (PBS), respectively.

**552.236-71 Authorities and Limitations (Apr 1984)**

(a) All work shall be performed under the general direction of the Contracting Officer, who alone shall have the power to bind the Government and to exercise the rights, responsibilities, authorities and functions vested in him by the contract documents, except that he shall have the right to designate authorized representatives to act for him. Wherever any provision in this contract specifies an individual (such as, but not limited to, Construction Engineer, Resident Engineer, Inspector or Custodian) or organization, whether Governmental or private, to perform any act on behalf of or in the interests of the Government, that individual or organization shall be deemed to be the Contracting Officer's authorized representative under this contract but only to the extent so specified. The Contracting Officer may, at any time during the performance of this contract, vest in any such authorized representatives additional power and authority to act for him or designate additional representatives, specifying the extent of their authority to act for him; a copy of each document vesting additional authority in an authorized representative or designating an additional authorized representative shall be furnished to the Contractor.

(b) The Contractor shall perform the contract in accordance with any order (including but not limited to instruction, direction, interpretation, or determination) issued by an authorized representative in accordance with his authority to act for the Contracting Officer; but the Contractor assumes all the risk and consequences of performing the contract in accordance with any order (including but not limited to instruction, direction, interpretation, or determination) of anyone not authorized to issue such order.

**552.236-72 Specialist (Apr 1984)**

The term “Specialist,” as used in the contract specification, shall mean an individual or firm of established reputation (or, if newly organized, whose personnel have previously established a reputation in the same field), which is regularly engaged in, and which maintains a regular force of workmen skilled in either (as applicable) manufacturing or fabricating items required by the contract, installing items required by the contract, or otherwise performing work required by the contract. Where the contract specification requires installation by a specialist, that term shall also be deemed to mean either the manufacturer of

the item, an individual or firm licensed by the manufacturer, or an individual or firm who will perform the work under the manufacturer's direct supervision

**552.236-74 Working hours (Apr 1984)**

(a) It is contemplated that all work will be performed during the customary working hours of the trades involved unless otherwise specified in this contract. Work performed by the Contractor at his own volition outside such customary working hours shall be at no additional expense to the Government.

(b) Any requests received by the Contractor from occupants of existing buildings to change the hours of work shall be referred to the Contracting Officer for determination.

**552.236-75 Use of Premises (Apr 1984)**

(a) If the premises are occupied, the Contractor, his subcontractors, and their employees shall comply with the regulations governing access to, operation of, and conduct while in or on the premises and shall perform the work required under this contract in such a manner as not to unreasonably interrupt or interfere with the conduct of Government business.

(b) Any request received by the Contractor from occupants of existing buildings to change the sequence of work shall be referred to the Contracting Officer for determination.

(c) If the premises are occupied, the Contractor, his subcontractors and their employees shall not have access to or be admitted into any building outside the scope of this contract except with official permission.

**552.236-76 Measurements (Apr 1984)**

All dimensions shown of existing work and all dimensions required for work that is to connect with work now in place, shall be verified by the Contractor by actual measurement of the existing work. Any discrepancies between the contract requirements and the existing conditions shall be referred to the Contracting Officer before any work affected thereby has been performed.

**552.236-79 Samples (Apr 1984)**

(a) After the award of the contract, the Contractor shall furnish for the approval of the Contracting Officer samples required by the specifications or by the Contracting Officer. Samples shall be delivered to the Contracting Officer or to the Architect as specified or as directed. The Contractor shall prepay all shipping charges on samples. Materials or equipment for which samples are required shall not be used in the work until approved in writing by the Contracting Officer.

(b) Each sample shall have a label indicating:

- (1) Name of project building or facility, project title and contract number.
- (2) Name of Contractor and, if appropriate, name of subcontractor.
- (3) Identification of material or equipment with specification requirement.
- (4) Place of origin.
- (5) Name of producer and brand (if any).

Samples of finished materials shall have additional markings that will identify them under the finish schedules.

(c) The Contractor shall mail under separate cover a letter in triplicate submitting each shipment of samples and containing the information required in paragraph (b) of this clause. He shall enclose a copy of this letter with the shipment and send a copy to the Government representative on the project. Approval of a sample shall be only for the characteristics or use named in such approval and shall not be construed to change or modify any contract requirement. Substitutions will not be permitted unless they are approved in writing by the Contracting Officer.

(d) Approved samples not destroyed in testing will be sent to the Government representative at the project. Approved samples of hardware in good condition will be marked for identification and may be used in the work. Materials and equipment, incorporated in the work shall match the approved samples. Other samples not destroyed in testing or not approved will be returned to the Contractor at his expense if so requested at time of submission.

(e) Failure of any material to pass the specified tests will be sufficient cause for refusal to consider, under this contract, any further samples of the same brand or make of that material or equipment which previously has proved unsatisfactory in service.

(f) Samples of various materials or equipment delivered on the site or in place may be taken by the Government representative for testing. Samples failing to meet contract requirements will automatically void previous approvals of the items tested. The Contractor shall replace such materials or equipment found not to have met contract requirements, or there shall be a proper adjustment of the contract price as determined by the Contracting Officer.

(g) Unless otherwise specified, when tests are required only one test of each sample proposed for use will be made at the expense of the Government. Samples which do not meet specification requirements will be rejected. Testing of additional samples will be made by the Government at the expense of the Contractor.

**552.236-80 Heat (Apr 1984)**

Unless otherwise specified or unless already provided by the Government the Contractor shall;

(a) Provide heat, as necessary to protect all work, materials, and equipment against injury from dampness and cold;

- (b) Protect, cover and/or heat as may be necessary, to produce and maintain a temperature of not less than 50 degrees Fahrenheit (1) in the concrete during the placing, setting and curing of concrete, and (2) in the plaster during the application, setting and curing of plaster; and
- (c) Provide heat as necessary in the area where work is to be done to provide the minimum temperature recommended by the supplier or manufacturer of the material, but in no case less than 50 degrees Fahrenheit, for a period beginning 10 days before placing of interior finishes and finish materials and continuing until completion or beneficial occupancy of the area, whichever is earlier.

#### **552.236-81 Use of Equipment by the Government (Apr 1984)**

- (a) The Government may take over and operate, with Government employees, such equipment as is necessary for heating or cooling such areas of the building as require the service, as soon as the installation is sufficiently complete.
- (b) The Contracting Officer will advise the Contractor by letter, prior to the use of equipment, which items of equipment will be operated, and the date and time such operation will begin.
- (c) Government operation of equipment will not relieve the Contractor of the one-year guarantee on materials and workmanship elsewhere provided for in this contract.
- (d) The guarantee period, elsewhere provided for in this contract, for each piece of equipment shall be in accordance with the "Guarantees" clause of this contract.

#### **552.236-82 Subcontracts (Apr 1984)**

- (a) Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors, or to limit the work performed by any trade.
- (b) The Contractor shall be responsible to the Government for acts and omissions of his own employees and of subcontractors and their employees. He shall also be responsible for the coordination of the work of the trades, subcontractors and suppliers.
- (c) The Government will not undertake to settle any differences between or among the Contractor, subcontractors, or suppliers.

#### **552.238-71 Submission and Distribution of Authorized FSS Schedule Pricelists (Sep 1999) (Deviation Dec 2004)**

- (a) The Contracting Officer will return one copy of the Authorized FSS Schedule Pricelist to the Contractor with the notification of contract award.
- (b) The Contractor shall provide to the GSA Contracting Officer:
  - (1) Two paper copies of the Authorized FSS Schedule Pricelist; and
  - (2) The Authorized FSS Schedule Pricelist on a common-use electronic medium.
- (c) The Contracting Officer will provide detailed instructions for the electronic submission with the award notification. Some structured data entry in a prescribed format may be required.
- (d) During the period of the contract, the Contractor shall provide one copy of its Authorized FSS Schedule Pricelist to any authorized Schedule user, upon request.

#### **552.238-72 Identification of Products that have Environmental Attributes (Sep 2003)**

- (a) Several laws, Executive orders and Agency directives require Federal buyers to purchase products that are less harmful to the environment, when they are life cycle cost-effective (see FAR Subpart 23.7). The U.S. General Services Administration (GSA) requires contractors to highlight environmental products under Federal Supply Service schedule contracts in various communications media (e.g., publications and electronic formats).
- (b) Definitions. As used in this clause —
  - Energy-efficient product means a product that—
    - (1) Meets Department of Energy and Environmental Protection Agency criteria for use of the ENERGY STAR [reg] trademark label; or
    - (2) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.
  - GSA Advantage! is an on-line shopping mall and ordering system that provides customers with access to products and services under GSA contracts.
  - Other environmental attributes refers to product characteristics that provide environmental benefits, excluding recovered materials and energy and water efficiency. Several examples of these characteristics are biodegradable, recyclable, reduced pollutants, ozone safe, and low volatile organic compounds (VOCs).
  - Post-consumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Post-consumer material is part of the broader category of "recovered material." The Environmental Protection Agency (EPA) has developed a list of EPA-designated products in their Comprehensive Procurement

Guidelines (CPGs) to provide Federal agencies with purchasing recommendations on specific products in a Recovered Materials Advisory Notice (RMAN). The RMAN contains recommended recovered and post-consumer material content levels for the specific products designated by EPA (40 CFR part 247 and <http://www.epa.gov/cpg/>).

Recovered materials means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (Executive Order 13101 and 42 U.S.C. 6903 (19) and <http://www.epa.gov/cpg/>). For paper and paper products, see the definition at FAR 11.301 (42 U.S.C. 6962 (h)).

Remanufactured means factory rebuilt to original specifications.

Renewable energy means energy produced by solar, wind, geothermal, and biomass power.

Renewable energy technology means—

(1) Technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities; or

(2) The use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

(c) (1) The offeror must identify products that—

(i) Are compliant with the recovered and post-consumer material content levels

recommended in the Recovered Materials Advisory Notices (RMANs) for

EPA-designated products in the CPG program (<http://www.epa.gov/cpg/>);

(ii) Contain recovered materials that either do not meet the recommended levels in the RMANs or are not EPA-designated products in the CPG program (see FAR 23.401 and <http://www.epa.gov/cpg/>);

(iii) Are energy-efficient, as defined by either ENERGY STAR [reg] and/or FEMP's designated top 25th percentile levels (see ENERGY STAR [reg] at <http://www.energystar.gov/> and FEMP at <http://www.eere.energy.gov/>);

(iv) Are water-efficient;

(v) Use renewable energy technology;

(vi) Are remanufactured; and

(vii) Have other environmental attributes.

(2) These identifications must be made in each of the offeror's following mediums:

(i) The offer itself.

(ii) Printed commercial catalogs, brochures, and pricelists.

(iii) Online product website.

(iv) Electronic data submission for GSA Advantage! submitted via GSA's Schedules Input Program (SIP) software or the Electronic Data Inter-change (EDI). Offerors can use the SIP or EDI methods to indicate environmental and other attributes for each product that is translated into respective icons in GSA Advantage!.

(d) An offeror, in identifying an item with an environmental attribute, must possess evidence or rely on a reasonable basis to substantiate the claim (see 16 CFR part 260, Guides for the Use of Environmental Marketing Claims). The Government will accept an offeror's claim of an item's environmental attribute on the basis of—

(1) Participation in a Federal agency-sponsored program (e.g., the EPA and DOE ENERGY STAR [reg] product labeling program);

(2) Verification by an independent organization that specializes in certifying such claims; or

(3) Possession of competent and reliable evidence. For any test, analysis, research, study, or other evidence to be "competent and reliable," it must have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

#### **552.238-75 Price Reduction (May 2004) (Alternate I – May 2003)**

(a) Before award of a contract, the Contracting Officer and the Offeror will agree upon (1) the customer (or category of customers) which will be the basis of award, and (2) the Government's price or discount relationship to the identified customer (or category of customers). This relationship shall be maintained throughout the contract period. Any change in the Contractor's commercial pricing or discount arrangement applicable to the identified customer (or category of customers) which disturbs this relationship shall constitute a price reduction.

(b) During the contract period, the Contractor shall report to the Contracting Officer all price reductions to the customer (or category of customers) that was the basis of award. The Contractor's report shall include an explanation of the conditions under which the reductions were made.

(c) (1) A price reduction shall apply to purchases under this contract if, after the date negotiations conclude, the Contractor—

- (i) Revises the commercial catalog, pricelist, schedule or other document upon which contract award was predicated to reduce prices;
- (ii) Grants more favorable discounts or terms and conditions than those contained in the commercial catalog, pricelist, schedule or other documents upon which contract award was predicated; or

- (iii) Grants special discounts to the customer (or category of customers) that formed the basis of award, and the change disturbs the price/discount relationship of the Government to the customer (or category of customers) that was the basis of award.
- (2) The Contractor shall offer the price reduction to the eligible ordering activities with the same effective date, and for the same time period, as extended to the commercial customer (or category of customers).
- (d) There shall be no price reduction for sales—
  - (1) To commercial customers under firm, fixed-price definite quantity contracts with specified delivery in excess of the maximum order threshold specified in this contract;
  - (2) To eligible ordering activities under this contract;
  - (3) Made to State and local government entities when the order is placed under this contract (and the State and local government entity is the agreed upon customer or category of customer that is the basis of award); or
  - (4) Caused by an error in quotation or billing, provided adequate documentation is furnished by the Contractor to the Contracting Officer.
- (e) The Contractor may offer the Contracting Officer a voluntary Governmentwide price reduction at any time during the contract period.
- (f) The Contractor shall notify the Contracting Officer of any price reduction subject to this clause as soon as possible, but not later than 15 calendar days after its effective date.
- (g) The contract will be modified to reflect any price reduction which becomes applicable in accordance with this clause.

#### **552.238-76 Definition (Federal Supply Schedules)—Recovery Purchasing (Feb 2007)**

Ordering activity (also called "ordering agency" and "ordering office") means an eligible ordering activity (see 552.238-78, Alternate I) authorized to place orders under Federal Supply Schedule contracts.

#### **552.238-78 Scope of Contract (Eligible Ordering Activities) (May 2004) (Alternate I – Feb 2007)**

(a) This solicitation is issued to establish contracts which may be used on a nonmandatory basis by the agencies and activities named below, as a source of supply for the supplies or services described herein, for domestic delivery.

- (1) Executive agencies (as defined in Federal Acquisition Regulation Subpart 2.1) including nonappropriated fund activities as prescribed in 41 CFR 101-26.000;
- (2) Government contractors authorized in writing by a Federal agency pursuant to Federal Acquisition Regulation Subpart 51.1;
- (3) Mixed ownership Government corporations (as defined in the Government Corporation Control Act);
- (4) Federal Agencies, including establishments in the legislative or judicial branch of government (except the Senate, the House of Representatives and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol);
- (5) The District of Columbia;
- (6) Tribal governments when authorized under 25 U.S.C. 450j(k);
- (7) Qualified Nonprofit Agencies as authorized under 40 U.S.C. 502(b); and
- (8) Organizations, other than those identified in paragraph (d) of this clause, authorized by GSA pursuant to statute or regulation to use GSA as a source of supply.

(b) Definitions—

*Domestic delivery* is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

*Overseas delivery* is delivery to points outside of the 48 contiguous states, Washington, DC, Alaska, Hawaii, Puerto Rico, and U.S. territories.

(c) Offerors are requested to check one of the following boxes:

- ☐ Contractor will provide domestic and overseas delivery.
- ☐ Contractor will provide overseas delivery only.
- ☐ Contractor will provide domestic delivery only.

(d) The following activities may place orders against Federal Supply Schedules for products and services determined by the Secretary of Homeland Security to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack, on an optional basis; PROVIDED, the Contractor accepts order(s) from such activities: State and local government entities, includes any state, TFTP-MB-008745-B Refresh: 5 Part III - CONTRACT TERMS AND CONDITIONS Page: 40 of 71 local, regional or tribal government or any instrumentality thereof (including any local educational agency or institution of higher learning).

*State and local government entities*, means the states of the United States, counties, municipalities, cities, towns, townships, tribal governments, public authorities (including public or Indian housing agencies under the United States Housing Act of 1937), school districts, colleges and other institutions of higher education, council of governments (incorporated or not), regional or interstate government entities, or any agency or instrumentality of the preceding entities (including any local educational agency or institution of higher education), and including legislative and judicial departments. The term does not include contractors of, or grantees of, State or local governments.

- (1) *Local educational agency* has the meaning given that term in section 8013 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713).

(2) *Institution of higher education* has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(3) *Tribal government means--*

(i) The governing body of any Indian tribe, band, nation, or other organized group or community located in the continental United States (excluding the State of Alaska) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(ii) Any Alaska Native regional or village corporation established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(e) Articles or services may be ordered from time to time in such quantities as may be needed to fill any requirement, subject to the Order Limitations thresholds which will be specified in resultant contracts. Overseas activities may place orders directly with schedule contractors for delivery to CONUS port or consolidation point.

(f) (1) The Contractor is obligated to accept orders received from activities within the Executive Branch of the Federal Government.

(2) The Contractor is not obligated to accept orders received from activities outside the Executive Branch; however, the Contractor is encouraged to accept such orders. If the Contractor elects to accept such orders, all provisions of the contract shall apply, including clause 552.232-79, Payments by Credit Card. If the Contractor is unwilling to accept such orders, and the proposed method of payment is not through the Credit Card, the Contractor shall return the order by mail or other means of delivery within 5 workdays from receipt. If the Contractor is unwilling to accept such orders, and the proposed method of payment is through the Credit Card, the Contractor must so advise the ordering activity within 24 hours of receipt of order. (Reference clause 552.232-79, Payment by Credit Card.) Failure to return an order or advise the ordering activity within the time frames of this paragraph shall constitute acceptance whereupon all provisions of the contract shall apply.

(g) The Government is obligated to purchase under each resultant contract a guaranteed minimum of \$2,500 (two thousand, five hundred dollars) during the contract term.

#### **552.238-80 Use of Federal Supply Schedule Contracts by Certain Entities--Recovery Purchasing (FEB 2007)**

(a) If an entity identified in paragraph (d) of the clause at 552.238-78, Scope of Contract (Eligible Ordering Activities)--Alternate I, elects to place an order under this contract, the entity agrees that the order shall be subject to the following conditions:

(1) When the Contractor accepts an order from such an entity, a separate contract is formed which incorporates by reference all the terms and conditions of the Schedule contract except the Disputes clause, the patent indemnity clause, and the portion of the Commercial Item Contract Terms and Conditions that specifies "Compliance with laws unique to Government contracts" (which applies only to contracts with entities of the Executive branch of the U.S. Government). The parties to this new contract which incorporates the terms and conditions of the Schedule contract are the individual ordering activity and the Contractor. The U.S. Government shall not be liable for the performance or nonperformance of the new contract. Disputes which cannot be resolved by the parties to the new contract may be litigated in any State or Federal court with jurisdiction over the parties, applying Federal procurement law, including statutes, regulations and case law, and, if pertinent, the Uniform Commercial Code. To the extent authorized by law, parties to this new contract are encouraged to resolve disputes through Alternative Dispute Resolution. Likewise, a Blanket Purchase Agreement (BPA), although not a contract, is an agreement that may be entered into by the Contractor with such an entity and the Federal Government is not a party.

(2) Where contract clauses refer to action by a Contracting Officer or a Contracting Officer of GSA, that shall mean the individual responsible for placing the order for the ordering activity (e.g., Federal Acquisition Regulation 52.212-4 at paragraph (f) and FSS clause I-FSS-249 B).

(3) As a condition of using this contract, eligible ordering activities agree to abide by all terms and conditions of the Schedule contract, except for those deleted clauses or portions of clauses mentioned in paragraph (a)(1) of this clause. Ordering activities may include terms and conditions required by statute, ordinance, regulation, order, or as otherwise allowed by State and local government entities as a part of a statement of work (SOW) or statement of objective (SOO) to the extent that these terms and conditions do not conflict with the terms and conditions of the Schedule contract. The ordering activity and the Contractor expressly acknowledge that, in entering into an agreement for the ordering activity to purchase goods or services from the Contractor, neither the ordering activity nor the Contractor will look to, primarily or in any secondary capacity, or file any claim against the United States or any of its agencies with respect to any failure of performance by the other party.

(4) The ordering activity is responsible for all payments due the Contractor under the contract formed by acceptance of the ordering activity's order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(5) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(6) The supplies or services purchased will be used for governmental purposes only and will not be resold for personal use. Disposal of property acquired will be in accordance with the established procedures of the ordering activity for the disposal of personal property.

(7) The state or local government ordering activity will be responsible for purchasing products or services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster

- Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack.
- (b) If the Schedule Contractor accepts an order from an entity identified in paragraph (d) of the clause at 552.238-78, Scope of Contract (Eligible Ordering Activities)--Alternate I, the Contractor agrees to the following conditions--
- (1) The ordering activity is responsible for all payments due the Contractor for the contract formed by acceptance of the order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.
  - (2) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall decline the order using the same means as those used to place the order. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.
- (c) In accordance with clause 552.238-74, Industrial Funding Fee and Sales Reporting, the Contractor must report the quarterly dollar value of all sales under this contract. When submitting sales reports, the Contractor must report two dollar values for each Special Item Number--
- (1) The dollar value for sales to entities identified in paragraph (a) of the clause at 552.238-78, Scope of Contract (Eligible Ordering Activities)--Alternate I; and
  - (2) The dollar value for sales to entities identified in paragraph (d) of clause 552.238-78, Alternate I.
- (d) A listing of the Federal Supply Schedule contracts for the products and services available for disaster recovery purchasing is accessible in GSA's Schedules e-Library at Web site <http://www.gsaelibrary.gsa.gov/>. Click on the link, "Disaster Recovery Purchasing, State and Local." The participating Contractors and the products and services available for disaster recovery purchasing will be labeled with the Disaster Recovery Purchasing icon.

#### **552.246-73 Warranty—Multiple Award Schedule. (Mar 2000) Alternate I – May 2003)**

- (a) Applicable to domestic locations. Unless specified otherwise in this contract, the Contractor's standard commercial warranty as stated in the Contractor's commercial price list applies to this contract.
- (b) Applicable to overseas destinations. Unless specified otherwise in this contract, the Contractor's standard commercial warranty as stated in the commercial price list applies to this contract, except as follows:
- (b)(1) The Contractor must provide, at a minimum, a warranty on all non-consumable parts for a period of 90 days from the date that the ordering activity accepts the product.
  - (2) The Contractor must supply parts and labor required under the warranty provisions free of charge.
  - (b)(3) The Contractor must bear the transportation costs of returning the products to and from the repair facility, or the costs involved with Contractor personnel traveling to the ordering activity facility for the purpose of repairing the product onsite, during the 90-day warranty period.

#### **552.243-70 Pricing of Adjustments (Apr 1989)**

When costs are a factor in any determination of a contract price adjustment, such costs shall be in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR Part 31) in effect on the date of this contract.

#### **552.243-71 Equitable Adjustments (Apr 1984)**

- (a) The provisions of the "Changes" clause prescribed by FAR 52.243-4 are supplemented as follows:
- (1) Upon written request, the Contractor shall submit a proposal, in accordance with the requirements and limitations set forth in the "Equitable Adjustments" clause, for work involving contemplated changes covered by the request. The proposal shall be submitted within the time limit indicated in the request or any extension of such time limit as may be subsequently granted. The Contractor's written statement of the monetary extent of a claim for equitable adjustment shall be submitted in the following form:
    - (i) Proposals totaling \$5,000 or less shall be submitted in the form of a lump sum proposal with supporting information to clearly relate elements of cost with specific items of work involved to the satisfaction of the Contracting Officer, or his/her authorized representative.
    - (ii) For proposals in excess of \$5,000, the claim for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following detail:
      - Direct Costs
        - Material quantities by trades and unit costs (Manufacturing burden associated with material fabrication performed will be considered to be part of the material costs of the fabricated item delivered to the job site)
        - Labor breakdown by trades and unit costs (Identified with specific item of material to be placed or operation to be performed)
        - Construction equipment exclusively necessary for the change
        - Costs of preparation and/or revision to shop drawings resulting from the change
        - Workers' Compensation and Public Liability Insurance
        - Employment taxes under FICA and FUTA
        - Bond Costs—when size of change warrants revision
        - Overhead, Profit and Commission
  - (2) The allowable overhead shall be determined in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR Part 31) in effect on the date of this contract. The percentages for profit and

commission shall be negotiated and may vary according to the nature, extent and complexity of the work involved, but in no case shall exceed the following unless the Contractor demonstrates entitlement to a higher percentage:

To:	Overhead	Profit	Commission
Contractor on work performed by other than his own forces	—	—	10%
First-tier subcontractor on work performed by his subcontractors	—	—	10%
Contractor and/or the subcontractors for that portion of the work performed with their respective forces	To be negotiated	10%	

Not more than four percentages will be allowed regardless of the number of tier subcontractors. The Contractor shall not be allowed a commission on the commission received by a first tier subcontractor. Equitable adjustments for deleted work shall include credits for overhead, profit and commission. On proposals covering both increases and decreases in the amount of the contract, the application of overhead and profit shall be on the net change in direct costs for the Contractor or subcontractor performing the work.

(3) The Contractor shall submit with the proposal his request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the contract in its entirety.

(4) In considering a proposal, the Government shall make check estimates in detail, utilizing unit prices where specified or agreed upon, with a view to arriving at an equitable adjustment.

(5) After receipt of a proposal the Contracting Officer shall act thereon, within 30 days; provided however, that when the necessity to proceed with a change does not allow time properly to check a proposal or in the event of failure to reach an agreement on a proposal, the Government may order the Contractor to proceed on the basis of price to be determined at the earliest practicable date. Such price shall not be more than the increase or less than the decrease proposed.

(6) If a mutually acceptable agreement cannot be reached, the Contracting Officer may determine the price unilaterally.

(b) The provisions of the "Differing Site Conditions" clause prescribed by FAR 52.236-2 are supplemented as follows: The Contractor shall submit all claims for equitable adjustment in accordance with, and subject to the requirements and limitations set out in paragraph (a) of this "Equitable Adjustments" clause.

#### **552.246-72 Final Inspection and Tests (Sep 1999)**

The Contractor shall give written notice to the Contracting Officer at least 10 calendar days before the date the work will be completed and ready for final inspection and tests. Final inspection and tests will begin within 10 calendar days after the date specified in the Contractor's notice unless the Contracting Officer determines that the work is not ready for final inspection and so informs the Contractor

#### **552.246-75 Guarantees (May 1989)**

(a) Unless otherwise provided in the specifications, the Contractor guarantees all work to be in accordance with contract requirements and free from defective or inferior materials, equipment, and workmanship for 1 year after the date of final acceptance or the date the equipment or work was placed in use by the Government, whichever occurs first.

(b)

(1) If, within any guarantee period, the Contracting Officer finds that guaranteed work requires repair or change because of defective or inferior materials, equipment, or workmanship or is not in accordance with contract requirements, the Contracting Officer shall notify the Contractor in writing. The Contractor shall promptly, and without additional expense to the Government, correct:

(i) All guaranteed work;

(ii) All damage to equipment, the site, the building or its contents resulting from the unsatisfactory guaranteed work; and

(iii) Any work, materials, and equipment that are disturbed in fulfilling the guarantee, including any disturbed work, materials, and equipment that may have been guaranteed under another contract.

(2) If the Contractor fails to proceed promptly in accordance with the guarantee, the Government may have such work performed at the expense of the Contractor.

(c) Any special guarantees that may be required under the contract will be subject to paragraphs (a) and (b), insofar as they do not conflict with special guarantees.

(d) The Contractor shall furnish to the Government:

(1) Each transferable guarantee or warranty of equipment, materials, or installation furnished by any manufacturer, supplier, or installer in the ordinary course of business;

(2) All information required to make such guarantee or warranty legally binding and effective; and

(3) The information and the guarantee or warranty in sufficient time to permit the Government to meet any time limit specified in the guarantee or warranty or, if no time limit is specified, prior to completion and acceptance of all work under this contract

#### **552.252-6 Authorized Deviations in Clauses (Sep 1999) (Deviation FAR 52.252-6)**

(a) Deviations to FAR clauses.



- (1) This solicitation or contract indicates any authorized deviation to a Federal Acquisition Regulation (48 CFR Chapter 1) clause by the addition of "(DEVIATION)" after the date of the clause, if the clause is not published in the General Services Administration Acquisition Regulation (48 CFR Chapter 5).
- (2) This solicitation indicates any authorized deviation to a Federal Acquisition Regulation (FAR) clause that is published in the General Services Administration Acquisition Regulation by the addition of "(DEVIATION (FAR clause no.))" after the date of the clause.
- (b) Deviations to GSAR clauses. This solicitation indicates any authorized deviation to a General Services Administration Acquisition Regulation clause by the addition of "(DEVIATION)" after the date of the clause.
- (c) "Substantially the same as" clauses. Changes in wording of clauses prescribed for use on a "substantially the same as" basis are not considered deviations.

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*Updated 03/26/2008*

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Division of Wage Determinations | Date of Last Revision: 7/31/2007

State(s): California

Areas: California COUNTIES OF Alameda, Contra Costa  
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Wage Determination No.: 05-2053

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 7/24/2007

State(s): California

Areas: California COUNTIES OF Riverside, San Bernardino  
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Wage Determination No.: 05-2055

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 8/31/2007

State(s): California

Areas: California COUNTIES OF Alpine, Amador, Butte, Colusa, Del Norte,  
El Dorado, Glenn, Humboldt, Lake, Mendocino, Modoc, Nevada, Placer,  
Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity,  
Yolo, Yuba

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Wage Determination No.: 05-2057

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): California

Areas: California COUNTIES OF Imperial, San Diego  
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Wage Determination No.: 05-2059

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 7/31/2007

State(s): California

Areas: California COUNTIES OF Marin, San Francisco, San Mateo  
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Wage Determination No.: 05-2061

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/31/2007

State(s): California

Areas: California COUNTIES OF Santa Clara, Santa Cruz  
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Wage Determination No.: 05-2063

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/19/2007

State(s): California

Areas: California COUNTIES OF San Luis Obispo, Santa Barbara  
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Wage Determination No.: 05-2067

Revision No.: 6

Division of Wage Determinations | Date of Last Revision: 8/17/2007

State(s): California

Areas: California COUNTIES OF Calaveras, San Joaquin, Stanislaus,  
Tuolumne  
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Wage Determination No.: 05-2069

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/31/2007

State(s): California

Areas: California COUNTIES OF Napa, Solano, Sonoma  
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Wage Determination No.: 05-2071

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/24/2007

State(s): California

Areas: California COUNTIES OF Ventura  
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Wage Determination No.: 05-2073

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 9/26/2007

State(s): California

Areas: California COUNTIES OF Inyo, Kings, Tulare  
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Wage Determination No.: 05-2079

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 7/05/2007

State(s): Colorado

Areas: Colorado COUNTIES OF Cheyenne, El Paso, Kit Carson, Lincoln,  
Teller  
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Wage Determination No.: 05-2081

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 9/27/2007

State(s): Colorado

Areas: Colorado COUNTIES OF Adams, Arapahoe, Boulder, Broomfield, Clear  
Creek, Denver, Douglas, Elbert, Gilpin, Grand, Jackson, Jefferson,  
Logan,  
Morgan, Park, Phillips, Sedgwick, Summit, Washington, Weld, Yuma

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Wage Determination No.: 05-2083

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/24/2007

State(s): Colorado

Areas: Colorado COUNTIES OF Alamosa, Archuleta, Baca, Bent, Chaffee, Conejos, Costilla, Crowley, Custer, Delta, Dolores, Eagle, Fremont, Garfield, Gunnison, Hinsdale, Huerfano, Kiowa, Lake, La Plata, Las Animas, Mesa, Mineral, Moffat, Montezuma, Montrose, Otero, Ouray, Pitkin, Prowers, Pueblo, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel

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Wage Determination No.: 05-3009

Revision No.: 6

Division of Wage Determinations | Date of Last Revision: 8/09/2007

State(s): Colorado

Areas: Colorado COUNTIES OF Larimer

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Wage Determination No.: 05-2087

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 2/11/2008

State(s): Connecticut

Areas: Connecticut COUNTIES OF Hartford, Litchfield, Middlesex, New London, Tolland

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Wage Determination No.: 05-2089

Revision No.: 7

Division of Wage Determinations | Date of Last Revision: 3/06/2008

State(s): Connecticut - statewide, except Hartford

Areas: Applicable statewide in Connecticut, excluding Fairfield County, New Haven County, New London County, excluding Colchester Town and the Hartford Metropolitan Statistical Area defined below:

HARTFORD County - Avon Town, Bloomfield Town, Canton Town, East Granby Town, East Hartford Town, East Windsor Town, Enfield Town, Farmington Town, Glastonbury Town, Granby Town, Hartford Town, Manchester Town, Marlborough Town, Newington Town, Rocky Hill Town, Simsbury Town, South Windsor Town, Suffield Town, West Hartford Town, Wethersfield Town, Windsor Town, Windsor Locks Town.



LITCHFIELD COUNTY - New Hartford Town

MIDDLESEX COUNTY - Cromwell Town, East Hampton Town, Portland Town

NEW LONDON COUNTY - Colchester Town

TOLLAND TOWN - Andover City, Bolton City, Columbia Town, Coventry Town,  
Ellington City, Hebron Town, Stafford Town, Tolland Town, Vernon City,  
Willington Town

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Wage Determination No.: 05-3023

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 6/07/2007

State(s): Connecticut

Areas: Connecticut COUNTY OF New London excluding Colchester Town

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Wage Determination No.: 05-3027

Revision No.: 3

Division of Wage Determinations | Date of Last Revision: 9/26/2007

State(s): Connecticut

Areas: Connecticut COUNTIES OF Fairfield, New Haven

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Wage Determination No.: 05-2095

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 8/14/2007

State(s) : Delaware, Maryland, Virginia

Areas: Delaware COUNTY OF Sussex  
Maryland COUNTIES OF Somerset, Wicomico, Worcester  
Virginia COUNTIES OF Accomack, Northampton

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Wage Determination No.: 05-2097

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 7/27/2007

State(s): Delaware, Maryland, New Jersey

Areas: Delaware COUNTIES OF Kent, New Castle  
Maryland COUNTIES OF Caroline, Cecil, Dorchester, Kent, Queen Anne's,  
Talbot  
New Jersey COUNTIES OF Salem

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Wage Determination No.: 05-2103

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/05/2007

State(s) : District of Columbia, Maryland, Virginia

Areas: District of Columbia, Statewide  
Maryland COUNTIES OF Calvert, Charles, Frederick, Montgomery, Prince  
George's, St Mary's  
Virginia COUNTIES OF Alexandria, Arlington, Fairfax, Falls Church,  
Fauquier, King George, Loudoun, Prince William, Stafford.

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Wage Determination No.: 05-2109

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): Florida

Areas: Florida COUNTIES OF Flagler, Volusia

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Wage Determination No.: 05-2111

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 8/16/2007

State(s): Florida

Areas: Florida COUNTIES OF Broward, Glades, Hendry, Martin, Okeechobee,  
Palm Beach, St Lucie

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Wage Determination No.: 05-2113

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): Florida

Areas: Florida COUNTIES OF Alachua, Bradford, Citrus, Dixie, Gilchrist,  
Lake, Levy, Marion, Sumter, Union

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Wage Determination No.: 05-2115

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): Florida, Georgia

Areas: Florida COUNTIES OF Baker, Clay, Columbia, Duval, Hamilton,  
Lafayette, Madison, Nassau, Putnam, Saint Johns, Suwannee, Taylor  
Georgia COUNTIES OF Brantley, Camden, Charlton, Glynn, Pierce

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Wage Determination No.: 05-2117

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 10/01/2007

State(s): Florida

Areas: Florida COUNTIES OF Brevard, Indian River  
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Wage Determination No.: 05-2119

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 8/16/2007

State(s): Florida

Areas: Florida COUNTIES OF Collier, Dade, Monroe  
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Wage Determination No.: 05-3007

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 8/02/2007

State(s): Florida

Areas: Florida COUNTIES OF Bay  
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Wage Determination No.: 05-2121

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 2/11/2008

State(s): Florida

Areas: Florida COUNTIES OF Calhoun, Franklin, Garden, Holmes, Jackson,  
Jefferson, Leon, Liberty, Wakulla, Walton, Washington  
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Wage Determination No.: 05-3033

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 3/14/2008

State(s): Florida

Areas: Florida COUNTIES OF Escambia, Okaloosa, and Santa Rosa  
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Wage Determination No.: 05-2123

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 2/11/2008

State(s): Florida

Areas: Florida COUNTIES OF Orange, Osceola, Seminole

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Wage Determination No.: 08-0077

Revision No.: 1

Division of Wage Determinations | Date of Last Revision: 2/28/2008

State(s): Florida

Areas: Florida COUNTY OF Orange

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Wage Determination No.: 05-2125

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 2/11/2008

State(s): Florida

Areas- Florida COUNTIES OF Charlotte, De Soto, Hardee, Hernando,  
Highlands, Hillsborough, Lee, Manatee, Pasco, Pinellas, Polk, Sarasota

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Wage Determination No.: 05-2131

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): Georgia

Areas: Georgia COUNTIES OF Atkinson, Baker, Ben Hill, Berrien, Brooks,  
Calhoun, Clinch, Coffee, Colquitt, Cook, Decatur, Dougherty, Echols,  
Grady, Irwin, Lanier, Lee, Lowndes, Mitchell, Randolph, Sumter,  
Terrell, Thomas, Tift, Turner, Ware, Worth

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Wage Determination No.: 05-2133

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 2/11/2008

State(s): Georgia

Areas: Georgia COUNTIES OF Banks, Barrow, Bartow, Butts, Carroll,  
Chattooga, Cherokee, Clarke, Clayton, Cobb, Coweta, Dawson, De Kalb,  
Douglas, Fannin, Fayette, Floyd, Forsyth, Franklin, Fulton, Gilmer,  
Gordon,  
Greene, Gwinnett, Habersham, Hall, Haralson, Henry, Jackson, Lumpkin,  
Madison, Morgan, Murray, Newton, Oconee, Oglethorpe, Paulding  
Pickens, Polk, Rabun, Rockdale, Spalding, Stephens, Towns, Union,  
Walton, White, Whitfield

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Wage Determination No.: 05-2135

Revision No.: 3

Division of Wage Determinations | Date of Last Revision: 2/11/2008

State(s): Georgia, South Carolina

Areas: Georgia COUNTIES OF Burke, Columbia, Elbert, Emanuel, Glascock,  
Hart, Jefferson, Jenkins, Lincoln, McDuffie, Richmond, Taliaferro,  
Warren, Wilkes  
South Carolina COUNTIES OF Aiken, Allendale, Bamberg, Barnwell,  
Edgefield, McCormick

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Wage Determination No.: 05-2137

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): Alabama, Georgia

Areas: Alabama COUNTIES OF Chambers, Lee, Randolph, Russell  
Georgia COUNTIES OF Chattahoochee, Harris, Heard, Marion, Meriwether,  
Muscogee, Quitman, Schley, Stewart, Talbot, Taylor, Troup, Webster

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Wage Determination No.: 05-2139

Revision No.: 3

Division of Wage Determination | Date of Last Revision: 5/29/2007

State(s): Georgia

Areas: Georgia COUNTIES OF Baldwin, Bibb, Bleckley, Crawford, Crisp,  
Dodge, Dooly, Hancock, Houston, Jasper, Johnson, Jones, Lamar, Laurens,  
Macon, Monroe, Montgomery, Peach, Pike, Pulaski, Putnam, Telfair,  
Treutlen, Twiggs, Upson, Washington, Wheeler, Wilcox, Wilkinson

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Wage Determination No.: 05-2141

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): Georgia, South Carolina

Areas: Georgia COUNTIES OF Appling, Bacon, Bryan, Bulloch, Candler,  
Chatham, Effingham, Evans, Jeff Davis, Liberty, Long, McIntosh,  
Screven, Tattnall, Toombs, Wayne  
South Carolina COUNTIES OF Hampton, Jasper

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Wage Determination No.: 05-2147

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): Guam, Northern Marianas

Areas: Guam Statewide  
Northern Marianas Statewide

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Wage Determination No.: 05-2153

Revision No.: 7

Division of Wage Determinations | Date of Last Revision: 9/26/2007

State(s): Hawaii

Areas: Hawaii Statewide  
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Wage Determination No.: 05-2159

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 8/17/2007

State(s): Idaho

Areas: Idaho Statewide  
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Wage Determination No.: 05-2165

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): Illinois

Areas: Illinois COUNTIES OF Champaign, De Witt, Douglas, Edgar, Ford,  
McLean, Piatt, Vermilion  
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Wage Determination No.: 05-2167

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 10/11/2007

State(s): Illinois

Areas: Illinois COUNTIES OF Cook, De Kalb, Du Page, Kane, Lake, Lee,  
McHenry,  
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Wage Determination No.: 05-3005

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 8/09/2007

State(s): Illinois

Areas: Illinois COUNTIES OF Boone, Ogle, Stephenson, Winnebago  
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Wage Determination No.: 05-2169

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 2/11/2008

State(s): Illinois

Areas: Illinois COUNTIES OF Christian, Clark, Coles, Crawford,  
Cumberland, Jasper, Macon, Moultrie, Shelby

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Wage Determination No.: 05-2171

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 10/11/2007

State(s): Illinois

Areas: Illinois COUNTIES OF Grundy, Iroquois, Kankakee, Kendall, La  
Salle Livingston, Will

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Wage Determination No.: 05-2173

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 2/11/2008

State(s): Illinois

Areas: Illinois COUNTIES OF Fulton, Hancock, Knox, McDonough, Marshall,  
Mason, Peoria, Putnam, Schuyler, Stark, Tazewell, Woodford

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Wage Determination No.: 05-2175

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 2/11/2008

State(s): Illinois, Iowa

Areas: Iowa COUNTIES OF Des Moines, Henry, Lee, Louisa, Muscatine,  
Scott  
Illinois COUNTIES OF Bureau, Carroll, Henderson, Henry, Jo. Daviess,  
Mercer, Rock Island, Warren, Whiteside

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Wage Determination No.: 05-2177

Revision No.: 3

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): Illinois

Areas: Illinois COUNTIES OF Adams, Brown, Cass, Greene, Logan,  
Macoupin, Menard, Montgomery, Morgan, Pike, Sangamon, Scott

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Wage Determination No.: 05-2183

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 3/11/2008

State(s): Illinois, Indiana

Areas: Illinois COUNTIES OF Edwards, Gallatin, Hardin, Lawrence,  
Richland, Wabash, White  
Indiana COUNTIES OF Brown, Crawford, Davies, Dubois, Gibson, Greene,  
Jackson, Knox, Lawrence, Martin, Monroe, Orange, Owen, Pike, Washington

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Wage Determination No.: 05-2185

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 3/11/2008

State(s): Indiana

Areas: Indiana COUNTIES OF Elkhart, Kosciusko

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Wage Determination No.: 05-2187

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/18/2007

State(s): Indiana, Kentucky, Tennessee

Areas: Indiana COUNTIES OF Perry, Posey, Spencer, Vanderburgh, Warrick  
Kentucky COUNTIES OF Butler, Caldwell, Christian, Crittenden,  
Daviss, Hancock, Henderson, Hopkins, Livingston, Logan, Lyon, McLean,  
Muhlenberg, Ohio, Todd, Trigg, Union, Warren, Webster  
Tennessee COUNTIES OF Montgomery, Stewart

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Wage Determination No.: 05-2189

Revision No.: 3

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): Indiana, Ohio

Areas: Indiana COUNTIES OF Adams, Allen, Blackford, De Kalb, Grant,  
Huntington, Jay, Lagrange, Noble, Steuben, Wabash, Wells, Whitley  
Ohio COUNTIES OF Defiance, Paulding, Williams

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Wage Determination No.: 05-2191

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 10/11/2007

State(s): Indiana

Areas: Indiana COUNTIES OF Benton, Jasper, Lake, La Porte, Newton,  
Porter, Pulaski, Starke



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Wage Determination No.: 05-2193

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): Indiana

Areas: Indiana COUNTIES OF Bartholomew, Boone, Clay, Decatur, Delaware, Fayette, Fountain, Hamilton, Hancock, Hendricks, Henry, Johnson, Madison, Marion, Montgomery, Morgan, Parke, Putnam, Rush, Shelby, Sullivan, Tippecanoe, Vermillion, Vigo, Warren  
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Wage Determination No.: 05-2195

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 8/15/2007

State(s): Indiana

Areas: Indiana COUNTIES OF Carroll, Cass, Clinton, Fulton, Howard, Miami, Tipton, White  
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Wage Determination No.: 05-2197

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/27/2007

State(s): Indiana

Areas: Indiana COUNTIES OF Marshall, Saint Joseph  
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Wage Determination No.: 05-2203

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 7/05/2007

State(s): Iowa

Areas: Iowa COUNTIES OF Allamakee, Benton, Black Hawk, Bremer, Buchanan, Butler, Cedar, Chickasaw, Clayton, Clinton, Delaware, Dubuque, Fayette, Floyd, Grundy, Howard, Iowa, Jackson, Jefferson, Johnson, Jones, Keokuk, Linn, Mitchell, Tama, Van Buren, Washington, Winneshiek  
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Wage Determination No.: 05-2205

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 8/17/2007

State(s): Iowa

Areas: Iowa COUNTIES OF Adair, Appanoose, Audubon, Boone, Calhoun, Carroll, Cerro Gordo, Clarke, Dallas, Davis, Decatur, Emmet, Franklin, Greene, Guthrie, Hamilton, Hancock, Hardin, Humboldt, Jasper, Kossuth, Lucas, Madison, Mahaska, Marion, Marshall, Monroe, Palo Alto, Pocahontas, Polk, Poweshiek, Ringgold, Story, Taylor, Union, Wapello, Warren, Wayne, Webster, Winnebago, Worth, Wright

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Wage Determination No.: 05-2211

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 9/26/2007

State(s): Johnston Island

Areas: Johnston Island Statewide

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Wage Determination No.: 05-2213

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): Kansas

Areas: Kansas COUNTIES OF Brown, Clay, Cloud, Coffey, Dickinson, Geary, Jackson, Jefferson, Lyon, Marshall, Morris, Nemaha, Osage, Ottawa, Pottawatomie, Republic, Riley, Saline, Shawnee, Wabaunsee, Washington

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Wage Determination No.: 05-2215

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 8/23/2007

State(s): Kansas

Areas: Kansas COUNTIES OF Allen, Barber, Barton, Bourbon, Butler, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Comanche, Cowley, Crawford, Decatur, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Harvey, Haskell, Hodgeman, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Logan, McPherson, Marion, Meade, Mitchell, Montgomery, Morton, Neosho, Ness, Norton, Osborne, Pawnee, Phillips, Pratt, Rawlins, Reno, Rice, Rooks, Rush, Russell, Scott, Sedgwick, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wallace, Wichita, Wilson, Woodson

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Wage Determination No.: 05-2221

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): Kentucky

Areas: Kentucky COUNTIES OF Anderson, Bath, Bell, Bourbon, Boyle, Breathitt, Casey, Clark, Clay, Estill, Fayette, Fleming, Franklin, Garrard, Green, Harlan, Harrison, Jackson, Jessamine, Knott, Knox, Laurel, Lee, Leslie, Letcher, Lincoln, McCreary, Madison, Marion, Menifee, Mercer, Montgomery, Morgan, Nicholas, Owen, Owsley, Perry, Powell, Pulaski, Robertson, Rockcastle, Rowan, Scott, Taylor, Washington, Wayne, Whitley, Wolfe, Woodford

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Wage Determination No.: 05-2223

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/31/2007

State(s): Indiana, Kentucky

Areas: Indiana COUNTIES OF Clark, Floyd, Harrison, Jefferson, Jennings, Scott  
Kentucky COUNTIES OF Breckinridge, Bullitt, Edmonson, Grayson, Hardin, Hart, Henry, Jefferson, Larue, Meade, Nelson, Oldham, Shelby, Spencer, Trimble

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Wage Determination No.: 05-2229

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): Louisiana

Areas: Louisiana PARISHES OF Acadia, Allen, Avoyelles, Beauregard, Caldwell, Catahoula, Concordia, Evangeline, Franklin, Grant, La Salle, Natchitoches, Rapides, Sabine, Tensas, Vernon, Winn

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Wage Determination No.: 05-2231

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): Louisiana

Areas: Louisiana PARISHES OF Ascension, Assumption, East Baton Rouge, East Feliciana, Iberia, Iberville, Livingston, Pointe Coupee, St Helena, Saint James, St Landry, St Martin, St Mary, Tangipahoa, West Baton Rouge, West Feliciana

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Wage Determination No.: 05-2233

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): Louisiana

Areas: Louisiana PARISHES OF Jefferson, Lafourche, Orleans,  
Plaquemines, St Bernard, St Charles, Saint John The Baptist, St  
Tammany, Terrebonne, Washington

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Wage Determination No.: 05-2235

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): Arkansas, Louisiana, Texas

Areas: Arkansas COUNTIES OF Columbia, Hempstead, Howard, Lafayette,  
Little River, Miller, Nevada, Sevier  
Louisiana PARISHES OF Bienville, Bossier, Caddo, Claiborne, De Soto,  
East Carroll, Jackson, Lincoln, Madison, Morehouse, Ouachita, Red  
River, Richland, Union, Webster, West Carroll  
Texas COUNTIES OF Bowie, Camp, Cass, Cherokee, Franklin, Gregg,  
Harrison, Marion, Morris, Panola, Red River, Rusk, Titus, Upshur

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Wage Determination No.: 05-2241

Revision No.: 6

Division of Wage Determinations | Date of Last Revision: 3/18/2008

State(s): Maine

Areas: Maine Statewide

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Wage Determination No.: 05-2247

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/05/2007

State(s): Maryland

Areas: Maryland COUNTIES OF Anne Arundel, Baltimore, Carroll, Harford,  
Howard, Baltimore City

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Wage Determination No.: 05-2249

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/05/2007

State(s): Maryland, Pennsylvania, Virginia

Areas: Maryland COUNTIES OF Allegany, Garrett, Washington  
Pennsylvania COUNTY OF Franklin  
Virginia COUNTIES OF Clarke, Culpeper, Frederick, Greene, Madison,  
Page, Rappahannock, Rockingham, Shenandoah, Warren

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Wage Determination No.: 05-3015

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/05/2007

State: Maryland

Areas: Maryland COUNTY of Queen Anne's

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Wage Determination No.: 05-2253

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 8/14/2007

State(s): Massachusetts, Rhode Island

Areas: Massachusetts COUNTIES OF Bristol, Norfolk, Worcester  
Rhode Island COUNTY OF Providence

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Wage Determination No.: 05-2255

Revision No.: 7

Division of Wage Determinations | Date of Last Revision: 3/11/2008

State(s): Massachusetts

Areas: Massachusetts COUNTIES OF Bristol, Essex, Middlesex, Norfolk,  
Plymouth, Suffolk, and Worcester

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Wage Determination No.: 05-2257

Revision No.: 7

Division of Wage Determinations | Date of Last Revision: 3/07/2008

State(s): Massachusetts, New Hampshire

Areas: Massachusetts COUNTY OF Essex  
New Hampshire COUNTY OF Rockingham

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Wage Determination No.: 05-2259

Revision No.: 6

Division of Wage Determinations | Date of Last Revision: 3/07/2008

State(s): Massachusetts

Areas: Massachusetts COUNTIES OF Barnstable, Bristol, Dukes, Nantucket,  
Norfolk, Plymouth

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Wage Determination No.: 05-2261

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 8/15/2007

State(s): Massachusetts

Areas: Massachusetts COUNTIES OF Berkshire, Franklin, Hampden,  
Hampshire, and Worcester

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Wage Determination No.: 05-2263

Revision No.: 7

Division of Wage Determinations | Date of Last Revision: 3/07/2008

State s): Massachusetts

Areas: Massachusetts and specific cities in COUNTY OF Worcester

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Wage Determination No.: 05-2269

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 10/11/2007

State(s): Michigan

Areas: Michigan COUNTIES OF Lenawee, Washtenaw

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Wage Determination No.: 05-2271

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/30/2007

State(s): Michigan

Areas: Michigan COUNTIES OF Alcona, Alpena, Antrim, Arenac, Benzie,  
Charlevoix, Cheboygan, Crawford, Emmet, Grand Traverse, Iosco,  
Kalkaska, Leelanau, Manistee, Missaukee, Montmorency, Ogemaw, Oscoda,  
Otsego, Presque Isle, Roscommon, Wexford

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Wage Determination No.: 05-2273

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 10/11/2007

State(s): Michigan

Areas: Michigan COUNTIES OF Genesee, Lapeer, Macomb, Monroe, Oakland,  
St Clair, Wayne

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Wage Determination No.: 05-3011

Revision No.: 6

Division of Wage Determinations | Date of Last Revision: 10/11/2007

State(s): Michigan

Areas: Michigan COUNTIES OF Livingston

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Wage Determination No.: 05-2275

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/31/2007

State(s): Michigan

Areas: Michigan COUNTIES OF Bay, Clare, Clinton, Gladwin, Gratiot,  
Huron,  
Isabella, Lake, Mason, Mecosta, Midland, Montcalm, Muskegon, Newaygo,  
Oceana, Osceola, Saginaw, Sanilac, Shiawassee, Tuscola  
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Wage Determination No.: 05-2277

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 8/14/2007

State(s): Michigan

Areas: Michigan COUNTIES OF Barry, Berrien, Branch, -Calhoun, Cass,  
Eaton, Hillsdale, Ingham, Ionia, Jackson, Kalamazoo, Saint Joseph, Van  
Buren  
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Wage Determination No.: 05-3029

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 6/19/2007

State(s): Michigan

Areas: Michigan COUNTIES OF Allegan, Kent, Ottawa  
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Wage Determination No.: 05-3031

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 6/19/2007

State(s): Michigan

Areas: Michigan COUNTY OF Muskegon  
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Wage Determination No.: 05-2279

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 7/24/2007

State(s): Michigan

Areas: Michigan COUNTIES OF Alger, Baraga, Chippewa, Delta, Dickinson,  
Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette,  
Menominee, Ontonagon, Schoolcraft  
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Wage Determination No.: 05-2285

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/27/2007

State(s): Minnesota, Wisconsin

Areas: Minnesota COUNTIES OF Aitkin, Becker, Beltrami, Carlton, Cass, Clay, Clearwater, Cook, Crow Wing, Hubbard, Itasca, Kanabec, Kittson, Koochiching, Lake, Lake of The Woods, Mahanomen, Marshall, Norman, Otter Tail, Pennington, Pine, Polk, Red Lake, Roseau, St Louis, Wadena, Wilkin

Wisconsin COUNTIES OF Ashland, Bayfield, Burnett, Douglas, Iron, Price, Rusk, Sawyer, Taylor, Washburn

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Wage Determination No.: 05-2287

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 8/15/2007

State(s): Minnesota, Wisconsin

Areas: Minnesota COUNTIES OF Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Washington, Wright

Wisconsin COUNTIES OF Pierce, Polk, St Croix

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Wage Determination No.: 05-2289

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 8/20/2007

State(s): Minnesota

Areas: Minnesota COUNTIES OF Benton, Big Stone, Blue Earth, Brown, Chippewa, Cottonwood, Dodge, Douglas, Faribault, Fillmore, Freeborn, Goodhue, Grant, Houston, Jackson, Kandiyohi, Lac Qui Parle, Le Sueur, Lincoln, Lyon, McLeod, Martin, Meeker, Mille Lacs, Morrison, Mower, Murray, Nicollet, Nobles, Olmsted, Pipestone, Pope, Redwood, Renville, Rice, Rock, Sherburne, Sibley, Stearns, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Waseca, Watonwan, Winona, Yellow Medicine

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Wage Determination No.: 05-2295

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 8/17/2007

State(s): Mississippi

Areas: Mississippi COUNTIES OF Alcorn, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Coahoma, Grenada, Itawamba, Lafayette, Lee, Leflore, Lowndes, Monroe, Montgomery, Noxubee, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Sunflower, Tallahatchie, Tate, Tishomingo, Tunica, Union, Washington, Webster, Winston, Yalobusha



Wage Determination No.: 05-2297

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 9/17/2007

State(s): Mississippi

Areas: Mississippi COUNTIES OF Adams, Amite, Attala, Claiborne, Copiah, Covington, Franklin, Hinds, Holmes, Humphreys, Issaquena, Jefferson, Jefferson Davis, Lamar, Lawrence, Leake, Lincoln, Madison, Marion, Pike, Rankin, Scott, Sharkey, Simpson, Smith, Walthall, Warren, Wilkinson, Yazoo

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Wage Determination No.: 05-2299

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 9/25/2007

State(s): Alabama, Mississippi

Areas: Alabama COUNTIES OF Sumter  
Mississippi COUNTIES OF Clarke, Forrest, Greene, Jasper, Jones, Kemper, Lauderdale, Neshoba, Newton, Perry, Wayne

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Wage Determination No.: 05-2301

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 9/17/2007

State(s): Mississippi

Areas: Mississippi COUNTIES OF George, Hancock, Harrison, Jackson, Pearl River, Stone

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Wage Determination No.: 05-2307

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 9/21/2007

State(s): Kansas, Missouri

Areas: Kansas COUNTIES OF Anderson, Atchison, Doniphan, Douglas, Franklin, Johnson, Leavenworth, Linn, Miami, Wyandotte  
Missouri COUNTIES OF Adair, Andrew, Atchison, Bates, Buchanan, Caldwell, Carroll, Cass, Chariton, Clay, Clinton, Cooper, Daviess, De Kalb, Gentry, Grundy, Harrison, Henry, Holt, Howard, Jackson, Johnson, Lafayette, Linn, Livingston, Macon, Mercer, Nodaway, Pettis, Platte, Putnam, Ray, Saline, Schuyler, Sullivan, Worth

Wage Determination No.: 05-2309

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 8/02/2007

State(s): Illinois, Missouri

Areas: Illinois COUNTIES OF Alexander, Bond, Calhoun, Clay, Clinton, Effingham, Fayette, Franklin, Hamilton, Jackson, Jefferson, 'Jersey, Johnson, Madison, Marion, Massac, Monroe, Perry, Pope, Pulaski, Randolph, St Clair, Saline, Union, Washington, Wayne, Williamson  
Missouri COUNTIES OF Audrain, Boone, Callaway, Clark, Cole, Crawford, Franklin, Gasconade, Jefferson, Knox, Lewis, Lincoln, Marion, Monroe, Montgomery, Osage, Pike, Ralls, Randolph, St Charles, Ste Genevieve, St Francois, St Louis, Scotland, Shelby, Warren, Washington

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Wage Determination No.: 05-2311

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 8/09/2007

State(s): Missouri

Areas: Missouri COUNTIES OF Barry, Barton, Benton, Bollinger, Butler, Camden, Cape Girardeau, Carter, Cedar, Christian, Dade, Dallas, Dent, Douglas, Dunklin, Greene, Hickory, Howell, Iron, Jasper, Laclede, Lawrence, McDonald, Madison, Maries, Miller, Mississippi, Moniteau, Morgan, New Madrid, Newton, Oregon, Ozark, Pemiscot, Perry, Phelps, Polk, Pulaski, Reynolds, Ripley, St Clair, Scott, Shannon, Stoddard, Stone, Taney, Texas, Vernon, Wayne, Webster, Wright

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Wage Determination No.: 05-2317

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 8/14/2007

State(s): Montana

Areas: Montana Statewide

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Wage Determination No.: 05-2323

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/19/2007

State(s): Nebraska

Areas: Nebraska COUNTIES OF Adams, Antelope, Arthur, Blaine, Boone, Boyd, Brown, Buffalo, Chase, Cherry, Clay, Custer, Dawson, Dundy, Fillmore, Franklin, Frontier, Furnas, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Kearney, Keith, Keya Paha, Knox, Lincoln, Logan, Loup, McPherson, Merrick, Nance, Nuckolls, Perkins, Phelps, Platte, Polk, Red Willow, Rock, Saline, Seward, Sherman, Thayer, Thomas, Valley, Webster, Wheeler, York

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Wage Determination No.: 05-2325

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 1/04/2008

State(s): Iowa, Nebraska

Areas: Iowa COUNTIES OF Adams, Buena Vista, Cass, Cherokee, Clay, Crawford, Dickinson, Fremont, Harrison, Ida, Lyon, Mills, Monona, Montgomery, Obrien, Osceola, Page, Plymouth, Pottawattamie, Sac, Shelby, Sioux, Woodbury  
Nebraska COUNTIES OF Burt, Butler, Cass, Cedar, Colfax, Cuming, Dakota, Dixon, Dodge, Douglas, Gage, Johnson, Lancaster, Madison, Nemaha, Otoe, Pawnee, Pierce, Richardson, Sarpy, Saunders, Stanton, Thurston, Washington, Wayne

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Wage Determination No.: 05-2331

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 8/17/2007

State(s): Arizona, Nevada

Areas: Arizona COUNTIES OF Mohave  
Nevada COUNTIES OF Clark, Esmeralda, Lincoln, Nye

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Wage Determination No.: 05-2333

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): California, Nevada

Areas: California COUNTIES OF Lassen, Mono  
Nevada All COUNTIES except Clark, Esmeralda, Lincoln, Nye

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Wage Determination No.: 05-2339

Revision No.: 6

Division of Wage Determinations | Date of Last Revision: 9/17/2007

State(s): New Hampshire

Areas: New Hampshire COUNTY OF Rockingham

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Wage Determination No.: 05-2345

Revision No.: 6

Division of Wage Determinations | Date of Last Revision: 7/27/2007

State(s): New Jersey

Areas: New Jersey COUNTIES OF Atlantic, Cape May, Cumberland

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Wage Determination No.: 05-2347

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 9/26/2007

State(s): New Jersey

Areas: New Jersey COUNTIES OF Bergen, Passaic  
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Wage Determination No.: 05-2349

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 9/26/2007

State(s): New Jersey

Areas: New Jersey COUNTIES OF Hunterdon, Middlesex, Somerset, Warren  
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Wage Determination No.: 05-2351

Revision No.: 3

Division of Wage Determinations | Date of Last Revision: 9/26/2007

State(s): New Jersey

Areas: New Jersey COUNTIES OF Monmouth, Ocean  
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Wage Determination No.: 05-2353

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 9/26/2007

State(s): New Jersey

Areas: New Jersey COUNTIES OF Essex, Hudson, Morris, Sussex, Union  
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Wage Determination No.: 05-2355

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 9/26/2007

State(s): New Jersey

Areas: New Jersey COUNTY OF Mercer

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Wage Determination No.: 05-2361

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 9/27/2007

State(s): New Mexico

Areas: New Mexico COUNTIES OF Bernalillo, Catron, Cibola, Colfax, De Baca, Guadalupe, Harding, Los Alamos, McKinley, Mora, Rio Arriba, Sandoval, San Juan, San Miguel, Santa Fe, Socorro, Taos, Torrance, Valencia  
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Wage Determination No.: 05-2367

Revision No.: 3

Division of Wage Determinations | Date of Last Revision: 7/27/2007

State(s): New York

Areas: New York COUNTIES OF Albany, Columbia, Fulton, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington  
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Wage Determination No.: 05-2371

Revision No.: 6

Division of Wage Determinations | Date of Last Revision: 8/0/2007

State(s): New York

Areas: New York COUNTIES OF Allegany, Cattaraugus, Chautauqua, Erie, Niagara, Wyoming  
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Wage Determination No.: 05-2373

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 9/26/2007

State(s): New York

Areas: New York COUNTIES OF Nassau, Suffolk  
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Wage Determination No.: 05-2375

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 9/26/2007

State(s): New York

Areas: New York COUNTIES OF Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland, Westchester  
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Wage Determination No.: 05-2377

Revision No.: 3

Division of Wage Determinations | Date of Last Revision: 7/24/2007

State(s): New York

Areas: New York COUNTIES OF Clinton, Essex, Franklin, Jefferson, Lewis,  
St Lawrence

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Wage Determination No.: 05-2379

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 9/26/2007

State(s): New York

Areas: New York COUNTIES OF Delaware, Dutchess, Orange, Sullivan,  
Ulster

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Wage Determination No.: 05-2381

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 3/14/2008

State(s): New York

Areas: New York COUNTIES OF Genesee, Livingston, Monroe, Ontario,  
Orleans, Schuyler, Seneca, Steuben, Wayne, Yates

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Wage Determination No.: 05-2383

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 8/06/2007

State(s): New York

Areas: New York COUNTIES OF Broome, Cayuga, Chemung, Chenango,  
Cortland,  
Hamilton, Herkimer, Madison, Oneida, Onondaga, Oswego, Otsego, Tioga,  
Tompkins

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Wage Determination No.: 05-2389

Revision No.: 6

Division of Wage Determinations | Date of Last Revision: 7/05/2007

State(s): North Carolina

Areas: North Carolina COUNTIES OF Alleghany, Ashe, Avery, Buncombe,  
Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson,  
McDowell, Macon, Madison, Mitchell, Polk, Rutherford, Swain,  
Transylvania, Watauga, Yancey

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Wage Determination No.: 05-2391

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 8/02/2007

State(s): North Carolina, South Carolina

Areas: North Carolina COUNTIES OF Alexander, Anson, Cabarrus, Catawba, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, Stanly, Union, Wilkes

South Carolina COUNTIES OF Chesterfield, Lancaster, York  
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Wage Determination No.: 05-2393

Revision No.: 6

Division of Wage Determinations | Date of Last Revision: 3/19/2008

State(s): North Carolina, South Carolina

Areas: North Carolina COUNTIES OF Beaufort, Bladen, Brunswick, Carteret, Columbus, Craven, Cumberland, Dare, Duplin, Greene, Harnett, Hoke, Hyde, Johnston, Jones, Lee, Lenoir, Martin, Moore, New Hanover, Onslow, Pamlico, Pender, Pitt, Richmond, Robeson, Sampson, Scotland, Tyrrell, Washington, Wayne, Wilson

South Carolina COUNTIES OF Dillon, Horry, Marion, Marlboro  
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Wage Determination No.: 05-2397

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 8/06/2007

States: North Carolina

Areas: North Carolina COUNTIES OF Alamance, Caswell, Chatham, Davidson, Davie, Forsyth, Guilford, Montgomery, Randolph, Rockingham, Stokes, Surry, Yadkin  
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Wage Determination No.: 05-2401

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 8/02/2007

State(s): North Carolina

Areas: North Carolina COUNTIES OF Bertie, Durham, Edgecombe, Franklin, Granville, Halifax, Hertford, Nash, Northampton, Orange, Person, Vance, Wake, Warren

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Wage Determination No.: 05-2407

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/27/2007  
State(s): North Dakota

Areas: North Dakota Statewide  
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Wage Determination No.: 05-2413

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 8/02/2007  
State(s): Indiana, Kentucky, Ohio

Areas: Indiana COUNTIES OF Dearborn, Franklin, Ohio, Ripley,  
Switzerland Kentucky COUNTIES OF Boone, Bracken, Campbell, Carroll,  
Gallatin, Grant, Kenton, Mason, Pendleton  
Ohio COUNTIES OF Brown, Butler, Clermont, Hamilton, Warren  
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Wage Determination No.: 05-2415

Revision No.: 3

Division of Wage Determinations | Date of Last Revision: 7/18/2007  
State(s): Ohio

Areas: Ohio COUNTIES OF Ashland, Ashtabula, Cuyahoga, Erie, Geauga,  
Huron, Lake, Lorain, Medina, Portage, Richland, Stark, Summit, Wayne  
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Wage Determination No.: 05-3013

Revision No.: 7

Division of Wage Determinations | Date of Last Revision: 3/11/2008  
State(s): Ohio

Areas: Ohio COUNTIES OF Carroll, Mahoning, Trumbull  
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Wage Determination No.: 05-2417

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 7/18/2007  
State(s): Ohio

Areas: Ohio COUNTIES OF Coshocton, Crawford, Delaware, Fairfield,  
Fayette, Franklin', Guernsey, Holmes, Knox, Licking, Madison, Marion,  
Morrow, Muskingum, Perry, Pickaway, Union  
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Determination No.: 05-2419

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 6/15/2007  
State(s): Indiana, Ohio

Areas: Indiana COUNTIES OF Randolph, Union, Wayne



Ohio COUNTIES OF Champaign, Clark, Clinton, Darke, Greene, Logan,  
Miami, Montgomery, Preble, Shelby

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Wage Determination No.: 05-2421

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 8/15/2007  
State(s): Ohio

Areas: Ohio COUNTIES OF Allen, Auglaize, Hancock, Hardin, Mercer,  
Putnam, Van Wert, Wyandot

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Wage Determination No.: 05-2423

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 7/05/2007  
State(s): Ohio

Areas: Ohio COUNTIES OF Adams, Athens, Gallia, Highland, Hocking,  
Jackson,  
Lawrence, Meigs, Pike, Ross, Scioto, Vinton

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Wage Determination No.: 05-2425

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 8/02/2007  
State(s): Ohio

Areas: Ohio COUNTIES OF Fulton, Henry, Lucas, Ottawa, Sandusky, Seneca,  
Wood

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Wage Determination No.: 05-2431

Revision No.: 5

Division of Wage Determinations: | Date of Last Revision: 9/28/2007  
State(s): Oklahoma

Areas: Oklahoma COUNTIES OF Alfalfa, Atoka, Beckham, Blaine, Bryan,  
Caddo, Canadian, Carter, Cleveland, Coal, Custer, Dewey, Ellis,  
Garfield,  
Garvin, Grady, Grant, Harper, Hughes, Johnston, Kingfisher, Lincoln,  
Logan, Love, McClain, Major, Marshall, Murray, Noble, Oklahoma, Payne,  
Pontotoc, Pottawatomie, Roger Mills, Seminole, Washita, Woods, Woodward

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Wage Determination No.: 05-2433

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 8/15/2007  
State(s): Oklahoma

Areas: Oklahoma COUNTIES OF Adair, Cherokee, Choctaw, Craig, Creek,  
Delaware, Haskell, Kay, Latimer, Le Flore, McCurtain, McIntosh,  
Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee,  
Pittsburg, Pushmataha, Rogers, Sequoyah, Tulsa, Wagoner, Washington

Wage Determination No.: 05-2439

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 8/21/2007  
State(s): Oregon

Areas: Oregon COUNTIES OF Benton, Coos, Crook, Curry, Deschutes,  
Douglas, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln,  
Linn

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Wage Determination No.: 05-2441

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 6/20/2007  
State(s): Oregon, Washington

Areas: Oregon COUNTIES OF Clackamas, Clatsop, Columbia, Gilliam, Hood  
River, Marion, Multnomah, Polk, Sherman, Tillamook, Wasco, Washington,  
Yamhill  
Washington COUNTIES OF Clark, Cowlitz, Klickitat, Pacific, Skamania,  
Wahkiakum

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Wage Determination No.: 05-2447

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 8/02/2007

State(s): Pennsylvania

Areas: Pennsylvania COUNTIES OF Berks, Cumberland, Dauphin, Juniata,  
Lancaster, Lebanon, Mifflin, Montour, Northumberland, Perry, Snyder,  
Union

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Wage Determination No.: 05-2449

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/27/2007

State(s): New Jersey, Pennsylvania

Areas: New Jersey COUNTIES OF Burlington, Camden, Gloucester  
Pennsylvania COUNTIES OF Bucks, Chester, Delaware, Lehigh, Montgomery,  
Northampton, Philadelphia

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Wage Determination No.: 05-2451

Revision No.: 6

Division of Wage Determinations | Date of Last Revision: 3/07/2008

State(s): Ohio, Pennsylvania

Areas: Ohio COUNTIES OF Belmont, Harrison, Jefferson, Tuscarawas  
Pennsylvania COUNTIES OF Allegheny, Armstrong, Beaver, Bedford, Blair,  
Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton,  
Crawford, Elk, Erie, Fayette, Forest, Fulton, Greene, Huntingdon,  
Indiana, Jefferson, Lawrence, McKean, Mercer, Potter, Somerset,  
Venango, Warren, Washington, Westmoreland

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 Wage Determination No.: 05-2453

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): Pennsylvania

Areas: Pennsylvania COUNTIES OF Bradford, Carbon, Columbia, Lackawanna, Luzerne, Lycoming, Monroe, Pike, Schuylkill, Sullivan, Susquehanna, Tioga, Wayne, Wyoming

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 Wage Determination No.: 05-2455

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/12/2007

State(s): Pennsylvania

Areas: Pennsylvania COUNTIES OF Adams, York

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 Wage Determination No. 05-2461

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 7/27/2007

State(s): Puerto Rico

Areas: Puerto Rico Statewide

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 Wage Determination No. 05-2467

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 8/15/2007

State(s): Rhode Island

Areas: Entire state excluding cities and towns in Providence County

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 Wage Determination No.: 05-2473

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): South Carolina

Areas: South Carolina COUNTIES OF Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Williamsburg

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 Wage Determination No.: 05-2475

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 9/28/2007

State(s): South Carolina

Areas: South Carolina COUNTIES OF Calhoun, Chester, Clarendon, Fairfield, Kershaw, Lexington, Newberry, Orangeburg, Richland, Saluda, Sumter

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Wage Determination No: 05-2477

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 8/17/2007

State(s): South Carolina

Areas: South Carolina COUNTIES OF Darlington, Florence, Lee  
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Wage Determination No.: 05-2479

Revision No.: 7

Division of Wage Determinations | Date of Last Revision: 8/09/2007

State(s): South Carolina

Areas: South Carolina COUNTIES OF Abbeville, Anderson, Cherokee,  
Greenville, Greenwood, Laurens, Oconee, Pickens, Spartanburg, Union  
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Wage Determination No.: 05-2485

Revision No.: 3

Division of Wage Determinations | Date of Last Revision: 7/27/2007

State(s): South Dakota

Areas: South Dakota COUNTIES OF Bennett, Butte, Corson, Custer, Dewey,  
Fall River, Gregory, Haakon, Harding, Jackson, Jones, Lawrence, Lyman,  
Meade, Mellette, Pennington, Perkins, Shannon, Stanley, Todd, Tripp,  
Ziebach  
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Wage Determination No.: 05-3025

Revision No.: 6

Division of Wage Determinations | Date of Last Revision: 7/24/2007

State(s): South Dakota

Areas: South Dakota COUNTIES OF Aurora, Beadle, Bon Homme, Brookings,  
Brown, Brule, Buffalo, Campbell, Charles Mix, Clark, Clay, Codington,  
Davison, Day, Deuel, Douglas, Edmunds, Faulk, Grant, Hamlin, Hand,  
Hanson, Hughes, Hutchinson, Hyde, Jerauld, Kingsbury, Lake, Lincoln,  
Marshall, McCook, McPherson, Miner, Minnehaha, Moody, Potter, Roberts,  
Sanborn, Spink, Sully, Turner, Union, Walworth, Yankton  
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Wage Determination No.: 05-2491

Revision No.: 3

Division of Wage Determinations | Date of Last Revision: 7/27/2007

State(s): Georgia, Tennessee

Areas: Georgia COUNTIES OF Catoosa, Dade, Walker  
Tennessee COUNTIES OF Bledsoe, Bradley, Coffee, Franklin, Grundy,  
Hamilton, McMinn, Marion, Meigs, Polk, Rhea, Sequatchie, Van Buren

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Wage Determination No.: 05-2493

Revision No.: 6

Division of Wage Determinations | Date of Last Revision: 8/09/2007

State(s): Tennessee

Areas: Tennessee COUNTIES OF Anderson, Blount, Campbell, Claiborne, Cumberland, Fentress, Grainger, Hamblen, Jefferson, Knox, Loudon, Monroe, Morgan, Pickett, Roane, Scott, Sevier, Union  
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Wage Determination No.: 05-2495

Revision No.: 7

Division of Wage Determinations | Date of Last Revision: 2/22/2008

State(s) : Arkansas, Kentucky, Mississippi, Tennessee

Areas: Arkansas COUNTIES OF Craighead, Crittenden, Cross, Lee, Mississippi, Poinsett, St Francis  
Kentucky COUNTIES OF Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, McCracken, Marshall  
Mississippi COUNTIES OF Benton, De Soto, Marshall, Tippah  
Tennessee COUNTIES OF Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, Lauderdale, McNairy, Madison, Obion, Shelby, Tipton, Weakley  
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Wage Determination No.: 05-2497

Revision No.: 7

Division of Wage Determinations | Date of Last Revision: 8/23/2007

State(s): Kentucky, Tennessee

Areas: Kentucky COUNTIES OF Adair, Allen, Barren, Clinton, Cumberland, Metcalfe, Monroe, Russell, Simpson  
Tennessee COUNTIES OF Bedford, Cannon, Cheatham, Clay, Davidson, De Kalb, Dickson, Hickman, Houston, Humphreys, Jackson, Lewis, Macon, Marshall, Maury, Perry, Putnam, Robertson, Rutherford, Smith, Sumner, Trousdale, Warren, White, Williamson, Wilson  
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Wage Determination No.: 05-2499

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 7/27/2007

State(s): Tennessee, Virginia

Areas: Tennessee COUNTIES OF Carter, Cocke, Greene, Hancock, Hawkins, Johnson, Sullivan, Unicoi, Washington  
Virginia COUNTIES OF Buchanan, Dickenson, Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise

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Wage Determination No.: 05-2503

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): Texas

Areas: Texas COUNTIES OF Bastrop, Blanco, Burleson, Burnet, Caldwell, Fayette, Hays, Lampasas, Lee, Llano, Mason, Milam, San Saba, Travis, Williamson

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Wage Determination No.: 05-2505

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 7/19/2007

State(s): Louisiana, Texas

Areas: Louisiana PARISHES OF Calcasieu, Cameron, Jefferson Davis, Lafayette, Vermilion  
Texas COUNTIES OF Angelina, Hardin, Jasper, Jefferson, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, Shelby, Tyler

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Wage Determination No.: 05-2507

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): Texas

Areas: Texas COUNTIES OF Aransas, Bee, Calhoun, Goliad, Jim Wells, Kleberg, Live Oak, Nueces, Refugio, San Patricio, Victoria

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Wage Determination No.: 05-2509

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 8/21/2007

State(s): Texas

Areas: Texas COUNTIES OF Collin, Cooke, Dallas, Delta, Denton, Ellis, Fannin, Grayson, Henderson, Hopkins, Hunt, Kaufman, Lamar, Navarro, Rains, Rockwall, Smith, Van Zandt, Wood

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Wage Determination No.: 05-2511

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 5/29/2007

State(s): New Mexico, Texas

Areas: New Mexico COUNTIES OF Chaves, Dona Ana, Eddy, Grant, Hidalgo, Lincoln, Luna, Otero, Sierra  
Texas COUNTIES OF Culberson, El Paso, Hudspeth

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Wage Determination No.: 05-2513

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 8/21/2007

State(s): Texas

Areas: Texas COUNTIES OF Erath, Hood, Jack, Johnson, Montague, Palo  
Pinto, Parker, Somervell, Tarrant, Wise  
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Wage Determination No.: 05-2515

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 8/16/2007

State(s): Texas

Areas: Texas COUNTIES OF Austin, Brazoria, Chambers, Colorado, Fort  
Bend, Galveston, Grimes, Harris, Houston, Jackson, Lavaca, Liberty,  
Madison, Matagorda, Montgomery, San Jacinto, Trinity, Walker, Waller,  
Washington, Wharton  
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Wage Determination No.: 05-2517

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 7/24/2007

State(s): New Mexico, Oklahoma, Texas

Areas:, New Mexico COUNTIES OF Curry, Lea, Quay, Roosevelt, Union  
Oklahoma COUNTIES OF Beaver, Cimarron, Texas  
Texas COUNTIES OF Andrews, Armstrong, Bailey, Borden, Brewster,  
Briscoe, Brown, Callahan, Carson, Castro, Childress, Cochran, Coke,  
Coleman, Coilingsworth, Comanche, Concho, Cottle, Crane, Crockett,  
Crosby, Dallam, Dawson, Deaf Smith, Dickens, Donley, Eastland, Ector,  
Fisher, Floyd, Foard, Gaines, Garza, Glasscock, Gray, Hale, Hall,  
Hansford, Hardeman, Hartley, Haskell, Hemphill, Hockley, Howard,  
Hutchinson, Irion, Jeff Davis, Jones, Kent, Kimble, King, Knox, Lamb,  
Lipscomb, Loving, Lubbock, Lynn, McCulloch, Martin, Menard, Midland,  
Mitchell, Moore, Motley, Nolan, Ochiltree, Oldham, Parmer, Pecos,  
Potter, Presidio, Randall, Reagan, Reeves, Roberts, Runnels,  
Schleicher, Scurry, Shackelford, Sherman, Stephens, Sterling,  
Stonewall, Sutton, Swisher, Taylor, Terrell, Terry, Throckmorton, Tom  
Green, Upton, Ward, Wheeler, Winkler, Yoakum, Young  
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Wage Determination No.: 05-2519

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 2/12/2008

State(s): Texas

Areas: Texas COUNTIES OF Brooks, Cameron, Dimmit, Duval, Frio, Hidalgo,  
Jim Hogg, Kenedy, La Salle, Maverick, Starr, Webb, Willacy, Zapata,  
Zavala

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Wage Determination No.: 05-2521

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 9/26/2007

State(s): Texas

Areas: Texas COUNTIES OF Atascosa, Bandera, Bexar, Comal, De Witt,  
Edwards, Gillespie, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Kinney,  
McMullen, Medina, Real, Uvalde, Val Verde, Wilson  
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Wage Determination No.: 05-2523

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/27/2007

State(s): Texas

Areas: Texas COUNTIES OF Anderson, Bell, Bosque, Brazos, Coryell,  
Falls, Freestone, Hamilton, Hill, Leon, Limestone, McLennan, Mills,  
Robertson  
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Wage Determination No.: 05-2525

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 6/15/2007

State(s): Oklahoma, Texas

Areas: Oklahoma COUNTIES OF Comanche, Cotton, Greer, Harmon, Jackson,  
Jefferson, Kiowa, Stephens, Tillman  
Texas COUNTIES OF Archer, Baylor, Clay, Wichita, Wilbarger  
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Wage Determination No.: 05-2531

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 8/14/2007

State(s): Utah

Areas: Utah Statewide  
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Wage Determination No.: 05-2537

Revision No.: 7

Division of Wage Determinations | Date of Last Revision: 3/13/2008

State(s): Vermont

Areas: Vermont Statewide  
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Wage Determination No.: 05-2543

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 11/13/2007

State(s): North Carolina, Virginia

Areas: North Carolina COUNTIES OF Camden, Chowan, Currituck, Gates,  
Pasquotank, Perquimans  
Virginia COUNTIES OF Gloucester, Isle of Wight, James City, Mathews,  
Southampton, Surry, York, Chesapeake, Hampton, Newport News, Norfolk,  
Poquoson, Portsmouth, Suffolk, Virginia Beach, Williamsburg



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Wage Determination No.: 05-2545

Revision No.: 6

Division of Wage Determinations | Date of Last Revision: 9/25/2007  
State(s): Virginia

Areas: Virginia COUNTIES OF Albemarle, Amelia, Brunswick, Buckingham, Caroline, Charles City, Charlotte, Charlottesville, Chesterfield, Colonial Heights, Cumberland, Dinwiddie, Essex, Fluvanna, Goochland, Greenville, Hanover, Henrico, King and Queen, King William, Lancaster, Louisa, Lunenburg, Mecklenburg, Middlesex, New Kent, Northumberland, Nottoway, Orange, Powhatan, Prince Edward, Prince George, Richmond, Sussex, Westmoreland, Hopewell, Petersburg

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Wage Determination No.: 05-2547

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/27/2007

State(s): Virginia

Areas: Virginia COUNTIES OF Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Campbell, Carroll, Craig, Floyd, Franklin, Giles, Halifax, Henry, Highland, Montgomery, Nelson, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Wythe

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Wage Determination No.: 05-3019

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/05/2007

State(s): Virginia

Areas: Virginia COUNTIES OF Fredericksburg, Spotsylvania

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Wage Determination No.: 05-2553

Revision No.: 3

Division of Wage Determinations | Date of Last Revision: 9/17/2007  
State(s): Virgin Islands

Areas: Virgin Islands Statewide

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Wage Determination No.: 05-2559

Revision No.: 6

Division of Wage Determinations | Date of Last Revision: 11/30/2007

State(s): Washington

Areas: Washington COUNTIES OF Clallam, Grays Harbor, Jefferson, Kitsap, Mason

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Wage Determination No.: 05-2561

Revision No.: 6

Division of Wage Determinations | Date of Last Revision: 2/21/2008

State(s): Washington

Areas: Washington COUNTIES OF Island, San Juan, Skagit

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Wage Determination No.: 05-2563

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 2/21/2008

State(s): Washington

Areas: Washington COUNTIES OF King, Snohomish, Whatcom

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Wage Determination No.: 05-2565

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 12/18/2007

State(s): Washington

Areas: Washington COUNTIES OF Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Garfield, Grant, Kittitas, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Whitman

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Wage Determination No.: 05-2567

Revision No.: 6

Division of Wage Determinations | Date of Last Revision: 2/20/2008

State(s): Washington

Areas: Washington COUNTIES OF Lewis, Pierce, Thurston

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Wage Determination No.: 05-2569

Revision No.: 5

Division of Wage Determinations | Date of Last Revision: 10/01/2007

State(s): Oregon, Washington

Areas: Oregon COUNTIES OF Baker, Grant, Harney, Malheur, Morrow, Umatilla, Union, Wallowa, Wheeler  
Washington COUNTIES OF Benton, Franklin, Walla Walla, Yakima

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Wage Determination No.: 05-2573

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 9/29/2007

State(s): Kentucky, Ohio, West Virginia

Areas: Kentucky COUNTIES OF Boyd, Carter, Elliott, Floyd, Greenup, Johnson, Lawrence, Lewis, Magoffin, Martin, Pike

Ohio COUNTIES OF Monroe, Morgan, Noble, Washington  
West Virginia ALL COUNTIES EXCEPT Berkley and Jefferson

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Wage Determination No.: 05-3017

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/05/2007

State(s): West Virginia

Areas: West Virginia COUNTIES OF Berkley, Jefferson

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Wage Determination No.: 05-2575

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 7/19/2007

State(s): Wisconsin

Areas: Wisconsin COUNTIES OF Brown, Calumet, Door, Florence, Fond Du  
Lac,  
Forest, Green Lake, Kewaunee, Langlade, Lincoln, Manitowoc, Marathon,  
Marinette, Marquette, Menominee, Oconto, Oneida, Outagamie, Portage,  
Shawano, Sheboygan, Vilas, Waupaca, Waushara, Winnebago

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Wage Determination No.: 05-2577

Revision No.: 6

Division of Wage Determinations | Date of Last Revision: 8/14/2007

State(s): Wisconsin

Areas: Wisconsin COUNTIES OF Adams, Barron, Buffalo, Chippewa, Clark,  
Crawford, Dunn, Eau Claire, Grant, Jackson, Juneau, La Crosse, Monroe,  
Pepin, Richland, Trempealeau, Vernon, Wood

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Wage Determination No.: 05-2579

Revision No.: 2

Division of Wage Determinations | Date of Last Revision: 7/27/2007

State(s): Wisconsin

Areas: Wisconsin COUNTIES OF Columbia, Dane, Dodge, Green, Iowa,  
Jefferson, Lafayette, Rock, Sauk

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Wage Determination No.: 05-2581

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 9/27/2007

State(s): Wisconsin

Areas: Wisconsin COUNTIES OF Milwaukee, Ozaukee, Racine, Walworth,  
Washington, Waukesha

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Wage Determination No.: 05-3003

Revision No.: 4

Division of Wage Determinations | Date of Last Revision: 10/11/2007

State(s): Wisconsin

Areas: Wisconsin COUNTY OF Kenosha  
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Wage Determination No.: 05-2587

Revision No.: 3

Division of Wage Determinations | Date of Last Revision: 9/17/2007

State(s): Nebraska, Wyoming

Areas: Nebraska COUNTIES OF Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, Sioux  
Wyoming Statewide  
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Wage Determination No: 96-0223

Revision No.: 23

Division of Wage Determinations | Date of Last Revision: 8/07/2007

Service: 'Hazardous Waste Pickup and Disposal Services (Material/Oil and Related Cleanup)'

Area: 'NATIONWIDE: Applicable in the continental U.S. and Hawaii  
Regions are defined as follows: MIDWEST REGION: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin; NORTHEAST REGION: Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont; SOUTH REGION: Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia; WEST REGION: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.'  
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Wage Determination No: 1995-0317

Division of Wage Determinations

Revision No: 22

Date Of Revision: 06/20/2007

Nationwide: Applicable in the continental U.S., Alaska and Hawaii.

**\*\*Fringe Benefits Required Follow the Occupational Listing\*\***

Employed on U.S. Government contracts for aerial photographer, aerial seeding, aerial spraying, transportation of personnel and cargo, fire reconnaissance, administrative flying, fire detection, air taxi mail service, and other flying services.

EXCEPT SCHEDULED AIRLINE TRANSPORTATION AND LARGE MULTI-ENGINE AIRCRAFT SUCH AS THE B-727, DC-8, AND THE DC-9.

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Wage Determination No: 2004-0047

Division of Wage Determinations  
Revision No: 9

Date Of Revision: 08/23/2007

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NATIONWIDE: This wage determination applies to the Coastline of the U.S., Alaska and Hawaii except DC, DE, FL, GA, MD, NC, SC and VA (Southern Areas) .

ALASKA AREA: Alaska Coastline.

GULF OF MEXICO AREA: All land areas adjacent to the Gulf of Mexico, except Gulf of Mexico area in Texas and Louisiana (see WDs numbers below).

NEW ENGLAND AREA: From the border of New Brunswick, Canada down to longitude that is parallel to the border between Massachusetts and Rhode Island so as to include Nantucket Island and Martha's Vineyard.

NEW YORK AREA: From the above down to the line between Monmouth and Ocean Counties, New Jersey.

NORTHERN CALIFORNIA AREA: From the above longitudinal parallel line extending out from the border of Oregon and California.

OREGON AREA: From the above longitudinal parallel line extending out from the border of Washington and Oregon.

SOUTHERN CALIFORNIA AND HAWAII AREA: From the border of Mexico to a line starting from the border between San Luis Obispo and Monterey Counties, California parallel to the latitudinal lines, including Hawaii.

WASHINGTON AREA: From the above to a longitudinal parallel line extending out from the border of Canada and Washington.

See WD 2002-0190 for Louisiana and WD 2002-0261 for Texas.

The Southeast Area has been removed which includes the Southern Area of New

Jersey and can be located on WD 2007-0134.

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